

# **Leo Strauss**

Seminar on Montesquieu

A course offered in winter quarter, 1966

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**Session 1: January 4, 1966**

**Leo Strauss:** So the topic for this seminar is Montesquieu's *Spirit of Laws*. [This semester] we will discuss<sup>1</sup> only the first part, because *The Spirit of Laws* is a very large book, and we don't wish to rush through this.

The first question is, Why are we interested in Montesquieu? There are two reasons<sup>2</sup>: first<sup>3</sup>, we are of course interested in the United States Constitution. *The* authentic commentary on the Constitution—from the theoretical point of view—is the *Federalist Papers*, and *the* authority for the *Federalist Papers* is Montesquieu. The *Federalist Papers* refer to Montesquieu in two points of importance: first, federalism; and second, and above all, separation of powers. We will take up these two subjects when we come to Montesquieu's discussion of them.<sup>4</sup> But we study Montesquieu also for another reason, connected not especially with the American Constitution, but with political theory or political philosophy as *such*.

I have to begin at the beginning, which means I have to say a few things which some of you will have heard from me *ad nauseam*. First, what is political philosophy? Well, we can say political philosophy is the quest for *the* best or *the* just social or political order. I will leave it at that. I think that is the simplest and<sup>5</sup> truest definition of what political philosophy is.

Now *today* we are confronted with the fact that *very* few people—and surely very few political scientists—believe that political philosophy is a serious or<sup>6</sup> possible enterprise. Political philosophy is today radically questionable, and the reasons for that are twofold (yet these two reasons are somehow related to each other).

Now the two prevailing schools of thought—prevailing today—can be called positivism, on the one hand, and historicism, on the other. Positivism may be said to be that view of political science according to which it is the task of political science to discover laws of political behavior. And that means political science cannot pass any value judgments. It only sees how men behave politically and doesn't pass judgment on them. The distinction between so-called *facts* and *values* is fundamental. Positivism views things in such a way that it is possible to *know* facts (and of course also *values*, which are facts), but it is not possible to say which values are the true values or [which are] superior to other values, and so on. You can have *facts* with knowledge of values, of course, but you cannot judge of this. The key word for positivism is *science*—the scientific study of politics, and therefore no value judgments.

The other view, much less *visibly* powerful—in this country especially—than positivism, but invisibly quite powerful, is historicism. (You may see at once that there is not *necessarily* an *incompatibility* between positivism and historicism, although on a deeper level there is.) Now the historicist argument is this: It's not against political philosophy; it's not that value judgments are impossible, but rather that the question of *the* best

political order does not make sense. For the human situation differs so much from time to time [and] from culture to culture that it is impossible to speak of *the* best political order.

But in a more *precise* way—and here you will see the *difference* between historicism and positivism—historicism asserts that the fundamental presuppositions of human thought change from epoch to epoch in such a way that the change is not<sup>7</sup> progress. Positivism would tend to say that the change is<sup>8</sup> progress (for example, from classical civilization to present-day civilization is<sup>9</sup> progress),<sup>10</sup> whereas historicism would say that the change (say from Greek mathematics to seventeenth-century mathematics) is not<sup>11</sup> progress. Do you understand?

Historicism is a more *radical* view than positivism for the following reason: It questions something which positivism does not. It questions the claim of modern science to be the way toward truth. Science, according to historicism, is not *the* way, but [only] *one* kind of understanding of the world which is not simply superior or inferior to the others.<sup>12</sup> [T]he scientific way of thinking just *happens* to predominate for the present time<sup>13</sup>. [It] spreads [equally] to all countries (or is about to spread to all countries), but this does not yet mean that it is *the* superior way of thinking, orientation.

Now these two views (positivism and historicism) combined bring about the present situation, which can be expressed in a formula: political philosophy is impossible but history of political philosophy is necessary. I cannot quote you any book or article in which this is stated, but you only have to consult the political scientists—or, for that matter, announcements of political science departments—to see that.

[At this point the transmission is greatly impaired. The following fragments can only suggest the general tenor of Professor Strauss's remarks.]

There are very few . . . elections . . . the majority . . . the *mainstream* of political science . . . possibly . . . willing to state this principle . . .

Now having reminded you of these things, which you *know* explicitly or implicitly . . . Montesquieu . . . the political philosopher must be the . . . But why is it necessary to study Montesquieu, or for that matter any other political thinker? Why . . . we are given the . . . twentieth century most of you . . . Why should we bother about the ones . . . antiquated . . . Why do we not let the sleeping dogs lie? There are a number of reasons, one of them being that the now-prevailing views are not simply true, or at least not all clear, and therefore we may be . . . by studying the alternatives which are no longer . . . powerfully . . . by contemporaries . . . stated . . . that political philosophy is impossible is equally . . . Let us assume that the now-prevailing views . . . remarkable . . . a long time until they emerge . . . resistances which in backward people are still powerful up to the present day, one must *know* those resistances, their power, their plausibility, their evidence. These resistances . . . in theoretical matters . . . these matters . . . it is not possible . . . we cannot say I don't care about my . . .

[At this point the audibility briefly improves.]

Because if we do not care about them we cannot become aware of any *problem* in dealing<sup>14</sup> [with] those hidden premises, or we will take for granted things which we ought not to take for granted. I will give you an illustration that has something to do with the historicism I spoke of before. Today the expression “philosophy of history” is quite common and is used by all kinds and conditions of people, including<sup>15</sup> philosophers of history. Somehow we assume that this is a thing which goes without saying: that everyone has, whether he knows it or not, a philosophy of history, and that every culture, too, has its kind of philosophy of history. For example, I have seen quite a few books and articles dealing with the philosophy of history. But people who are a bit more careful see that there are certain difficulties, and then they make a distinction between the philosophy of history and the *theology* of history. They say that what is in the Bible or in St. Augustine is theology of history and not philosophy of history. Yet there is here a difficulty. Augustine and the Bible and other *similar* thinkers do not use the words “philosophy of history” or “theology of history.” There is a general rule that people have a word or words for that which is important for them. But in the Bible there is no word for history. Up to the present day there is no Hebrew word for history—except *historia*, which is obviously a Greek word. There is no such thing, and therefore there cannot be a philosophy of history. The<sup>16</sup> [term] “philosophy of history” was coined in 1760 by Voltaire.

[The defect in recording resumes, and persists to the end of the session.]

. . . at that time something was fairly innocuous, namely *reflection* on what history contains . . . history of Rome has to do . . . is not concerned with facts but with what you can *learn* about the course of events in a general way. Philosophic reflection . . . what we can call it. A philosophy of history . . . philosophical . . . Hegel . . . early nineteenth century . . . and here . . . something which . . . if one can assume that political philosophy . . . one must . . . that there are many political *philosophies* . . . are wholly incompatible and . . . once can . . . philosophic . . . political philosopher . . . Hegel . . . necessarily . . . a variety of . . . an epoch . . . and every doctrine is . . . relative to . . . Locke’s doctrine is relative to the . . . elementary . . . Now Hegel . . . he admits that his own doctrine is also relative to his time . . . Now Hegel avoided this . . . and relativistic . . . by saying that if an *absolute* . . . and really true . . . is relative to the Absolute. That may sound . . . the only way . . . Hegel . . . this is . . . of the truth. Hegel assumes that the . . . necessary . . . Now what . . . Hegel’s . . . every philosophy . . . or every philosopher is a son of his time. What may hold . . . rational . . . Every philosopher . . . there is no rational order of the time, no appointed . . . of history . . . unfinishable . . . Of course it can be and will be finished . . . meaningful end or completion which the human problem . . .

In the eighteenth and nineteenth centuries . . . men’s thinking was characterized by what the Germans call . . . i.e., by the *awareness* that we and our thoughts be *known* . . . and that no thoughts are ever . . . the time when a case could be brought against . . . Before . . . emerged, political philosophy had taken on the form of a natural

law teaching . . . what political philosophy . . . a natural idea, unchanging, transhistorical . . . . This notion of the natural law goes back to the origin of the traditional political philosophy . . . in the very nature of the best political order, i.e. of that which is by nature *just*, by nature *right*. Nature was originally understood in contradistinction to *convention* . . . . Today this is no longer intelligible, this distinction between nature and convention . . . . What is today the overall concept . . . is called . . . . And for everybody . . . nature . . . natural right . . . .

But for . . . culture or civilization . . . the origin of political philosophy . . . distinction between nature and convention. Now on the basis of the now-prevailing concept of culture and civilization, philosophers and scientists speak of course *apart* from culture . . . According to the original notion . . . nature and convention, philosophy or science is exactly the attempt to get out of the fetters of convention . . . nature . . . example of the cave . . . this shows us that these . . . character of . . . eventually one point . . . of culture . . . only . . . culture . . . purpose . . . realized . . . in opposition to . . . there is only one way of doing things in principle . . . . Now this . . . the ordinary truth . . . general . . . of the now-prevailing truth . . . body . . .

Now the next question which we have to raise is how to study Montesquieu. And I will answer with a view to Montesquieu's own claim. Montesquieu claims that he teaches in truth. If we read him . . . if we read the conclusions . . . actual . . . and we will try to make this clear, but . . . cannot possibly . . . the alternative way of reading Montesquieu . . . and that means . . . of Montesquieu . . . . First . . . and secondly . . . about all law, i.e. . . . he was a . . . what he means by the *spirit* of the law . . . traditionally . . . try to explain all law in terms of extralegal phenomena . . . and the particular way in which . . . of what we now call sociology . . . .

One word about . . . Europe . . . the other . . . .

[The sound becomes so faint, that such fragments as can be made out seem useless in following the train of thought. Samples taken at later intervals in the tape are likewise inaudible because of defective recording, and eventually the speech is entirely obliterated by static.

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<sup>1</sup> Moved "this semester."

<sup>2</sup> Deleted "the."

<sup>3</sup> Deleted "is this."

<sup>4</sup> Deleted "those who prepare their papers on the books in which Montesquieu deals with federalism and separation of powers, respectively, will consult the statements in the *Federalist Papers* on Montesquieu and perhaps try to find out what the differences are—not only the agreements—between the *Federalist Papers* on the one hand and Montesquieu on the other."

<sup>5</sup> Deleted "the."

<sup>6</sup> Deleted "a."

<sup>7</sup> Deleted "a."

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<sup>8</sup> Deleted “a.”

<sup>9</sup> Deleted “a.”

<sup>10</sup> Deleted “of course.”

<sup>11</sup> Deleted “a.”

<sup>12</sup> Deleted “Science.”

<sup>13</sup> Deleted “and,” moved “equally.”

<sup>14</sup> Deleted “in.”

<sup>15</sup> Deleted “of course, obviously.”

<sup>16</sup> Deleted “word.”

**Session 2: January 6, 1966**

**Leo Strauss:**<sup>1</sup> In the first paragraph of the preface Montesquieu expresses his concern to assume the spirit of the ancients: “lest I should consider those things as alike which are really different and lest I should miss the difference of those which appear to be alike.”<sup>iv</sup> What does this phrase—“lest I should miss the difference of those which appear to be alike”—add to the meaning of this paragraph? Why is Montesquieu apparently not concerned about missing the similarities in those things which appear to be different? What we have to do, I believe, is simply to read this paragraph. Let us try to translate it literally: “When I was called back to antiquity, I had tried to catch the *spirit* of it in order not to regard as similar cases which are really different and not to miss the differences of those which seem to be similar.” I see no difficulty in this paragraph. The difficulty<sup>2</sup> must be due to the ancients themselves.

There are two dangers to be avoided: We may *identify* ancient things with modern things. For example (to take a case which Montesquieu doesn’t discuss), to say “the polis is a state,” we identify the non-similar. Or we miss the differences of those which are similar. What would this be?

**Student:** [inaudible words]

**LS:** Now how do we explain them? Do you have an idea?

**Student:** Unless he refers to human nature, possibly?<sup>3</sup>

**LS:** But not here. The question does not [directly] concern<sup>4</sup> human nature, but human nature as modified either by antiquity or modernity, and the danger of its being mistaken—

**Student:** But is he<sup>5</sup> considering *man*<sup>6</sup> when he talks about mankind?

**LS:** Yes,<sup>7</sup> but man looks differently—*is* different—at different times because he is modified by all kinds of circumstances and therefore one must *see* men as they differ from epoch to epoch.

**Student:** It seems that he is, in a sense, excluding any danger that he would see things as different that are really the same. But why he feels that’s not a problem, not a danger, is more interesting.

**LS:** In other words, there is no danger of overlooking the difference. Is this the point?

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<sup>iv</sup> Charles de Montesquieu, *Spirit of Laws*, translated by Thomas Nugent, volume I (New York: Colonial Press, 1900), xxxi.



**Student:** No. The danger *is* only of overlooking the differences, not of overlooking the similarities, it seems.

**LS:** I think they're both real things, opposite sides of the same coin. I'm working on an example: the things known as liturgies. Where the ancients would<sup>8</sup> provide a bath or a forum or an amphitheater for a provincial town, we might miss a basic similarity. These liturgies do correspond to public benefactions and concerts and things given by the patrons nowadays.

**Student:** Or raised by taxes?

**LS:** Yes. And we might miss a *difference* if we don't suggest some kind of benefit. In the Athenian case the liturgies were *mandatory*, whereas Mrs. Freund gave her free concerts down at the museum not under the direct pressure of taxation. The ancient system was sufficiently compulsory that we have cases of people resisting.

**Student:** Yes, but how far does it fall under one of these two—

**LS:** I gave you two cases. The one was an example of our needing to look at a *similarity* that we might be led away from by the present meaning of the word "liturgy." It might make us forget to remember that it is very much like a public display by a private patron. So that would be an example of our overlooking *similarities* to stop getting accurately back to the way things were. And then a difference that should be remembered<sup>9</sup>: if the modern case is not compulsory, and the ancient (as the circumstances show) was, say in the Athenian, compulsory—

**Student:** Are you satisfied?

**LS:** No. What he says is simply that there are two sides to the coin. What Montesquieu says here is that he is only interested in one of them.

**Student:** [inaudible words]

**LS:** "Not regard as similar cases which are really different—not missing the differences of those things which seem to be similar." Yes, I think it is the *same* case, but somehow differently viewed. And what the difference of the point of view is I couldn't say now. I would have to think about it. Yes?

**Student:** Is it possible that he is opposing spirit to something unsaid or implicit, and that this is the brunt of his statement? He sought to look for the spirit of antiquity. And this is a common complaint at the time, that antiquity lies, you know—

**LS:** No, I don't. The spirit means, of course, the *essence*, the substance of things, and not the mere *word* or the mere *surface* of it.<sup>10</sup> [This] is what I think he means by that. And the *spirit* of antiquity differs from the spirit of modernity, although there are many<sup>11</sup>

deceptive similarities. This obviously is what he means in general. Now how far this explains sufficiently this sentence which [rightly] bothered Mr. W.<sup>12</sup>, that I am not now able to settle. Yes?

**Student:** You attached some importance to the difference between saying I *consider* things alike, and things which appear to *be* alike (in the one case) and the case when he, knowing there are differences, imposes a likeness upon them. This other case would be a case in which things are deceptive to most people, perhaps including Montesquieu. First, he is responsible—

**LS:** No, but the error is in both cases caused by the *seeming* similarity. In both cases. So the danger is that we modernize ancient things. That is the danger. The other danger is not mentioned here. Yes?

**Student:** This, I suppose, can't be answered until the whole book is read, but we've got to say that there really are no similarities between peoples in different ages and in different times, and that what we must look for are differences from the one common point of view which is a mutual science, or something.

**LS:** No, I believe Mr. W. is right, and I tend now to agree with him. Yet, he creates the impression<sup>13</sup> [that] there were *two* cases, whereas in fact there is only one case. And this is perhaps the *key*. We are not in danger to overlook *true* identities, *true* similarities. The danger is that we do not see the *immense* difference between the ancients and the moderns, and this is indeed a point which will appear especially in the first five [or] six books<sup>14</sup>. The difference is, according to Montesquieu, *immense*, and<sup>15</sup> he creates the impression<sup>16</sup> [of] the opposite danger only to destroy it<sup>17</sup>.

**Student:** It may be a little ingenious, but the trap that I fell in—

**LS:** There is nothing wrong with being ingenious. Why should—

**Student:** But the trap that I fell into was that the two parts look different; that is, I thought they were opposite sides of the same coin and made the error of accepting these things as being really different. So he is saying, silently, that it can be the other way around—not the *easy* way, but by giving you an example.

**LS:** That is true. But I think the main point is that from Montesquieu's point of view, the difference between the ancients and the moderns is *immense* and the danger is that we do not see the *immensity* of the difference.<sup>18</sup>

Was there any other point left over from last time? Then let us continue our discussion of Book I, chapter 1. We have read the *beginning* of the general definition of law and the discussion of the laws pertaining to God.<sup>19</sup> Let us continue here.

**Mr. Reinken:** "Since we observe that the world, though formed by the motion of matter and void of understanding, subsists always, its motions must have invariable laws. And

could we imagine another world, it must also have constant rules or it would be destroyed.

“Thus the creation, which seems an arbitrary act, supposes laws as invariable as those of the fatality of the atheists. It would be absurd to say that the Creator might govern the world without these rules, since without them it could not subsist.

“These rules are a fixed and invariable relation. In bodies moved, the motion is received, increased, diminished, or lost according to the relations of the quantity of matter and velocity; each diversity is uniformity, each change is constancy.”<sup>v</sup>

**LS:** Yes, but the key point is this: The rules are as invariable as the fatality of the atheist. There is no place for any caprice, [not] even for any free will. I referred last time to Leibniz’ famous doctrine, which is the most famous expression of this view.<sup>20</sup> And here we see the laws of motion. That is the kind of thing which he has in mind. It *could* not be different. Now this leads to other questions which he doesn’t in any way raise;<sup>21</sup> therefore let us skip that at least for the time being. Now let us read the next paragraph.

**Mr. Reinken:** “Particular intelligent beings may have laws of their own making, but they have some likewise which they never made. Before there were intelligent beings they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were possible relations of justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle, all the radii were not equal.”<sup>vi</sup>

**LS:** Yes. Now here we come to laws which are laws of *justice*. And what does he say here? We observed retroactively that he had not said anything of the justice of *God*, but now when he speaks of the particular intelligent beings, he speaks of justice. There is something he says without using the term. There is a *natural* justice, the justice not made by positive law. But he doesn’t call it that<sup>22</sup>. He calls it “*possible relations of justice*.” And he compares them to mathematical things: just as the relation between periphery and radius is wholly independent of the fact whether there is any circle ever in existence. The relations of justice—whatever they may be—are wholly independent of whether human *beings* [exist]<sup>23</sup>. And therefore this would of course also mean that if there is a God, he is supposed to be a *just* God. The truth of justice would bind him, and his actions could legitimately be *examined* from the point of view of whether they are just according to this sense.

One could say that the rules of justice have the form of hypothetical propositions: If this and this is the case, then that and that [follow]—just as in the case of the circle. And that could<sup>24</sup> mean—since they are hypothetical—that in the case of the *laws*, they become *actual* laws only by the command of the human sovereign. That is fundamentally the view which Hobbes takes in his *Leviathan* and the other writings when he says the laws of nature are not, properly speaking, laws, but *theory*, or *conclusions*, which can become

<sup>v</sup> *Spirit of Laws*, vol. I, bk. I, ch. 1, 1–2.

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. I, ch. 1, 2.

laws only by the act of the sovereign. Now you will see the condition covered comes out very well in the sequel. Would you read that please?

**Mr. Reinken:** “We must therefore acknowledge relations of equity antecedent to the positive law which establishes them—”

**LS:** Now he uses here “justice” and “equity” synonymously<sup>25</sup>: the relations of equity which are wholly independent of positive law. Take a simple thing like, “first come, first served.” That’s a relation of equity; that has not become *just* by virtue of law or custom, but is intrinsically just—if this is a good example. Yes?

**Mr. Reinken:** “—as, for instance, if human societies existed, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to show their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependence; if one intelligent being injures another, it deserves a retaliation; and so on.”<sup>vii</sup>

**LS:** No. It’s “*that* an intelligent being which has done evil to an intelligent being *deserves* to receive the same evil; and so on.” It’s the only case which is not stated in the subjunctive. The others are all subjunctives<sup>26</sup> and conditional clauses. The others refer<sup>27</sup>—two of the others—to which particular case? (If there were intelligent beings who had received some benefit of another being. And if an intelligent being had created an intelligent being.) That refers especially to God<sup>28</sup>. But this other, the last case, is not conditioned. That is quite another matter. So in other words, we know now that there are laws not only of God and of matter but also of<sup>29</sup> intelligent beings. But the case of the intelligent beings differs radically from those of all other beings, as he states in the next paragraph.

**Mr. Reinken:** “But the intelligent world is far from being so well governed as the physical. For though the former has also its laws, which of their own nature are invariable, it does not conform to them so exactly as the physical world. This is because, on the one hand, particular intelligent beings are of a finite nature, and consequently liable to error; and on the other, their nature requires them to act of themselves. Hence they do not steadily conform to their primitive laws; and even those of their own instituting they frequently infringe.”<sup>viii</sup>

**LS:** Yes. There are two kinds of laws: laws which can be transgressed and laws which *cannot* be transgressed—a trivial distinction. Now all other beings are subject to laws which they *cannot* transgress. But intelligent beings are subject to laws which they can transgress. How far this would apply to God—whether God has any laws which he can transgress—<sup>30</sup> is anybody’s guess. Montesquieu doesn’t say anything about it. Now let us continue. We should finish this chapter by all means.

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vii *Spirit of Laws*, vol. I, bk. I, ch. 1, 2.

viii *Spirit of Laws*, vol. I, bk. I, ch. 1, 2.

**Mr. Reinken:** “Whether brutes be governed by the general laws of motion or by a particular movement, we cannot determine.”

**LS:** In other words, whether the laws of mechanics are sufficient to explain life or not, we don’t know.<sup>31</sup>

**Mr. Reinken:** “Be that as it may, they have not a more intimate relation to God than the rest of the material world. And sentiment is of no other use to them than in the relation they have either to other particular beings or to themselves.

“By the allurements of pleasure they preserve the individual, and by the same allurements they preserve their species. They have natural laws because they are united by sentiment. Positive laws they have none, because they are not connected by knowledge. And yet they do not invariably conform to their natural laws. These are better observed by vegetables, that have neither understanding nor sense.”<sup>ix</sup>

**LS:** Then the key point is this: Brutes have *natural* laws because they are united by sentiment. They have no *positive* laws because they are not united by knowledge. *Natural* laws have nothing to do with *knowledge* or *reason*. Natural laws have to do only with the *subrational*—sentiment, or even without sentiment, as in the case of matter. Now the positive laws can<sup>32</sup> be transgressed. But even the natural laws can be transgressed, it would seem, because he says the brutes do not invariably obey or follow their *natural* laws.<sup>33</sup> Natural laws have nothing to do with *reason*, that is the crucial implication.<sup>34</sup> We will see the sequel of that. Please read the next paragraph.

**Mr. Reinken:** “Brutes have not the supreme advantages which we have, but they have some which we have not. They have not our hopes, but they are without our fears. They, like us, undergo death, but without knowing it. Even most of them preserve themselves better than we do, and do not make so bad a use of their passions.

“Man, as a physical being, is like other bodies governed by invariable laws.”

**LS:** As other *bodies*.<sup>35</sup> In other words, our bodies are subject to the same laws to which every *body* is subject.<sup>36</sup>

**Mr. Reinken:** “An intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loses; and as a sensible creature, he is subject to a thousand passions. Such a being might every instant forget his Creator; God has therefore reminded him by the laws of duty.”<sup>37</sup> Such a being is liable every moment to forget

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. I, ch. 1, 2–3.

<sup>x</sup> In original: “As intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he

himself; the philosophers have provided against this by the laws of morality. Formed to live in society, he might forget his fellow creatures; legislatures have therefore by political and civil laws returned him to his duty.”<sup>xi</sup>

**LS:**<sup>38</sup> Now here we get somewhat greater clarity about what he means. The moral laws of which he speaks here are not the *natural* laws. If *natural* laws are based on sentiment alone (subrational), then the laws of *morality* (which are based on self-*knowledge*) are meant to bring<sup>39</sup> man [back] to knowledge of himself, lest he forget<sup>40</sup>. This would be the one point. And the other point, which is *equally* important, is that these moral laws are not *social* laws. The *social* laws, the laws binding men to *other* men, are not the moral laws but the laws—political and civil<sup>41</sup>—laid down by legislators. These are very strange things.

**Student:** The moral law, then, is just the law which man gives himself in passing? You say they aren’t social and political laws.

**LS:** Yes. Look here<sup>42</sup>: “Such a being could at every moment forget himself. Philosophers have reminded him by the laws of morality. Made for living in society, he could forget the other.”

**Student:** Does that require that he legislate his own moral laws?

**LS:**<sup>43</sup> Surely. But what are the moral laws? Now very simply stated, the traditional view was that *moral* law has a natural identity. That is a crude statement, but it is not misleading<sup>44</sup>: the natural is the moral law. A little bit more precisely: The term “moral law” comes from Christian theology and is used primarily in order to designate a certain part of the Old Testament Law,<sup>45</sup> that part<sup>46</sup> which has not become obsolete through Christianity. So “Thou shalt not steal” would belong to the *moral* law and moral institutions. The judicial and ceremonial law have lost it. But “natural law” is a term which comes from the *Greek* tradition. And although it would be difficult—at least for me—to give you a clear statement that natural law is equal to moral law, nevertheless it is a *plausible* inference from the tradition.

Now what happens then<sup>47</sup> [when the term is developed, by Kant for instance], is that the moral law has nothing to do with the natural. Does that make sense?<sup>48</sup> That is the view which has since become very popular—I mean throughout the nineteenth century. Even now people still speak of the moral law, whereas people do not speak as easily today of the *natural* law. By “natural law” people think of *physical* laws rather than of laws of human conduct.

Now *here* Montesquieu is surely not simply following the tradition. That is shown by the fact that<sup>49</sup> what he calls natural law has nothing to do with reason, but at most with sentiment. The distinction which he makes here in the last paragraph of this chapter goes

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loses; and as a sensible creature, he is subject to a thousand passions. Such a being might every instant forget his Creator; God has therefore reminded him by the laws of religion.”

<sup>xi</sup> *Spirit of Laws*, vol. I, bk. I, ch. 1, 3.

back to Locke's *Essay Concerning Human Understanding*. I can read you<sup>50</sup> Book I,<sup>51</sup> chapter 28, paragraph 7<sup>52</sup>: "The laws that men generally refer their actions to, to judge of their rectitude or obliquity, seem to me to be these three: the *divine* law, the *civil* law, the law of *opinion* or *reputation*, if I may so call it."<sup>53</sup> The divine law corresponds to the laws of religion; the civil law corresponds to what he [Montesquieu] calls here "political and civil laws," and the law of opinion or reputation corresponds to the laws of philosophers, as he makes clear. Later on he says *philosophical* law, the measure of virtue and vice, and that is the law of reputation. But here reputation means<sup>54</sup> not something *entirely variable*, but<sup>55</sup> a kind of opinion which grows up *naturally*<sup>56</sup> in every society. And it has the character of an *endoxon* as Aristotle would call it—*existing* opinion<sup>57</sup> [which has] a stable existence in it. You should read this page or two in Locke. This will help you. Yes?

**Student:** Just a question of fact. I understood the term "moral law" came from Cicero rather than from the theologians. Would you clarify that? Am I confused?

**LS:** No, you may be right, for all I know. But I don't remember this in Cicero. Extremely simple: Go to the Classics Library, take out [Marquardt's] dictionaries of Cicero, and look up whether "*lex moralis*" occurs there.<sup>58</sup> The term is quite common in the discussion, for example, in the *Summa*—in Thomas' *Summa*—<sup>59</sup>of the Old Testament, of the *veteris lex*. This comes up quite naturally.<sup>60</sup>

**Student:** If the moral law is based on self-knowledge, isn't it also in a way then based on nature? Or on human nature?

**LS:** Yes, but this is complicated.<sup>61</sup> He uses here the expression<sup>62</sup>: "The philosophers have reminded him<sup>63</sup> by the laws of morality." If it is natural, why should the philosophers be necessary?<sup>64</sup> If it were natural, there would be a natural knowledge of it, not a knowledge acquired by art, by philosophy. But in a way this whole difficulty will be solved, or rather it will be rendered easier to state, by the next sentence. The question is very simply this: Did Montesquieu admit a *natural* law in the traditional, Thomistic sense? And this question we can easily answer on the basis of chapter 2. And in retrospect this difficulty now will become clearer.

**Student:** Is a law which could be transgressed really a law<sup>65</sup> [according to] the definition he gives in the very beginning, as a necessary relation deriving from true nature of things?

**LS:** Yes, in one way. Think of Hobbes,<sup>66</sup> [who] cannot be accused of orthodoxy. So let us take him as a simple example.<sup>67</sup> Hobbes has something like a natural law: to seek peace and everything conducive to peace. This follows as a little bit more than<sup>68</sup> prudential advice from our desire for self-preservation, and this desire is very powerful in man. But on the other hand, it is not all-powerful. And surely what we should *follow* as a desideratum from our desire for self-preservation is still *less* powerful. So there is no difficulty for Hobbes to understand that we could *transgress* something which he can metaphorically call a natural law. There is no difficulty in this. The difficulty is expressed in the term which I used, "metaphorical expression." We [will] come to that very soon.

Now one word about the *meaning* of this whole first chapter. What does he do? He gives us a general survey of laws, and what it *amounts* to is this: that he questions the *basis* of the traditional theological view. That is questioned surreptitiously and not by any *proof*. Necessity somehow takes the place of the *freedom* of the creator God. *Law* is a fundamental, all-comprehensive phenomenon. This is the thought which he conveys.

One word about the order of the subjects in this chapter. In the first paragraph he has enumerated the order: divinity, material world, intelligences superior to men, beasts, and man. Now when you look at how he executed this program you see he<sup>69</sup> no longer speaks later of intelligences superior to men because<sup>70</sup> [it] is very funny to say that intelligences superior to men (i.e., angels) may have laws which they have themselves made. I mean angels as a kind of political society, as it were, as a deliberative assembly making laws, is a bit funny. So Montesquieu is not very *convinced* that angels are a serious subject which one can safely say anything about. So what he says later<sup>71</sup> about particular intelligences concerns not angels, but men, and he therefore treats men *twice*: God, the material world, men, brutes, men again. Men can be viewed in two different ways:<sup>72</sup> from a quasi-angelic point of view or from a point of view which *ascends* rather from the brutes. And the traditional understanding of man is too *angelic*, from Montesquieu's point of view. That we can say. The simplest procedure to make chapter 1 orderly is to drop the angels. Then it is a simple order: God, material world, brutes, men (which, incidentally, is also the order of Genesis 1, according to the *literal* meaning—<sup>73</sup>if you do not say that [the] light mentioned in the first day are the angels, which is the traditional interpretation). Good.

But now let us turn to the central chapter of Book I, "Of the Laws of Nature." "Laws of nature" is used synonymously with "natural laws" by Montesquieu, as you can see by looking at the preceding paragraph. But it might be helpful if I remind you of a crucial point in the history of the doctrine of natural law. One can distinguish—and one *must* distinguish—between the traditional natural law doctrine classically expounded by Thomas Aquinas but going back in its roots to classical antiquity, and a *modern* teaching of natural law which goes back to Hobbes [and his] followers<sup>74</sup>.

<sup>75</sup>What are the differences? First, according to the Thomistic view the natural law is based on the three fundamental natural inclinations of man. They are self-preservation, sociality, and knowledge (especially knowledge of God), in the order of ascent. The first difference between this doctrine and the Hobbean doctrine is that in Hobbes the *higher* stages are *abolished*. Natural law is only concerned with *self-preservation*. Sociality and the concern with knowledge are *disregarded*.

That brings me to the *second* difference: sociality. Man has no natural inclination toward society. Man is by nature radically asocial. Expressed by Hobbes, man is by nature in a state of nature,<sup>76</sup> a pre-social state. The state of nature does not play *any* role in the traditional natural law doctrine.



The third point: In the traditional doctrine, the natural law is primarily a set of *duties*. In the modern doctrine it is primarily a set of rights. The primary phenomenon, according to Hobbes, is the right of self-preservation and all *duties* are *derivative* from that right.

I'll mention two more points which are not altogether irrelevant, although not as fundamental as the ones which I have mentioned. Traditionally, natural law was treated within the context of either law<sup>77</sup> in general or theology. There was no special separate teaching of natural law as natural law. In the modern age (seventeenth, eighteenth centuries) special *codes*<sup>78</sup> of natural law were written. There were *chairs* established—in Protestant universities—for natural law as natural law. This independence<sup>79</sup> [and] separation of natural law from political law<sup>80</sup> [and] theology, and the elaboration of a coherent, comprehensive natural law doctrine is a peculiarity of the modern development.

And the fifth and last item which I mention is again something very crude, but not unimportant. The *traditional* natural law doctrine was, on the whole, a *conservative* doctrine. The modern natural law doctrine was, on the whole, a *revolutionary* doctrine. Even in Hobbes this is a revolutionary doctrine because in Hobbes all *traditional limitations* of the sovereign power are<sup>81</sup> not binding. So the sovereign, as<sup>82</sup> the sovereign, can abolish them as he sees fit, which is a revolutionary doctrine.

Now if we raise the questions—which one *must* raise—What is *behind* this radical difference? Why did a man like Hobbes, to mention the most important member in this respect, think of such a radical *change* of natural law? Then we get from him this answer: Hitherto the natural law doctrine didn't have a sufficient basis, and it did not have a sufficient basis because it was in fundamental contradiction with the *passions* (see Hobbes's *Elements of Law*).<sup>xii</sup> One must build natural law on a foundation which is in *harmony* with the passions.

<sup>83</sup>To state it somewhat differently, the traditional natural law doctrine is utopian. *We* want to have a *realistic* natural law doctrine in agreement with what men actually desire and not with what they *ought* to desire. In brief, behind this change is that principle stated by Machiavelli in his *Prince*, chapter 15, that earlier political thought had taken its bearings by how men *ought* to live, whereas he, Machiavelli, is going to take his bearings by how men do live.

This much on the background of this whole doctrine. Montesquieu, of course, is not Hobbes—and doesn't agree with Hobbes—as you will see very soon. But he *builds* on Hobbes, just as Locke, who also doesn't agree with Hobbes, builds on Hobbes. Now let us read the second paragraph.

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<sup>xii</sup> Thomas Hobbes, *Elements of Law*. Within this work, Strauss seems here to point most specifically to a passage in the epistle dedicatory which includes the following: "they who have written of justice and policy in general do all invade each other, and themselves, with contradictions. To reduce this doctrine to the rules and infallibility of reason, there is no way, but first to put such principles down for a foundation, as passion, not mistrusting, may not seek to displace."

**Mr. Reinken:** “That law which, impressing on our minds the idea of a Creator, inclines us towards Him, is the first in importance, though not in order, of natural laws.”

**LS:** Montesquieu<sup>84</sup> makes his *bow* to the tradition. Of course duties toward God are *part* of the natural law. But this is not the *first* of the natural laws. Why is it not the first?<sup>85</sup>

**Mr. Reinken:** “Man in a state of nature would have rather the faculty of knowing than any knowledge.”<sup>xiii</sup>

**LS:**<sup>86</sup> Now here is the point. This is all shorthand, and one must rewrite it in longhand in order to understand it. What is wrong with the traditional natural law? The *principle* of the traditional natural law is<sup>87</sup>—and that is expected—[that] a law must have been duly promulgated in order to be a law. That is admitted. But the question is how *could* the *traditional* natural law have been duly promulgated to man as *man*? The traditional view somehow presupposes that man was from the very beginning on a high level of rationality. But what if the men who originally lived were more like beasts than like rational beings? They could not possibly have *understood* the traditional natural law, the laws of morality as taught by philosophers. And this is what he says here: Man in the state of nature would have the *faculty* of knowing, but he could not yet have knowledge. [In other words]<sup>88</sup> he could not know God, and therefore he could not have any *duties* toward God. Yes?

**Mr. Reinken:** “It is plain that his first ideas would not be speculative ideas.”

**LS:** Why is this clear? Well, first we have to eat.

**Mr. Reinken:** “He would think of the preservation of his being, before he would investigate its origin. Such a man would feel nothing in himself at first but impotency and weakness; his fears and apprehensions would be excessive; as appears from instances (were there any necessity of proving it) of savages found in forests, trembling at the motion of a leaf, and flying from every shadow.”<sup>xiv</sup>

**LS:** No. Everything *makes* his tremble. Everything *makes* him flee. This is no longer subjunctive; these are *facts*.

The early man, as he is<sup>89</sup> in the state of nature, is wholly *incapable* of having these notions which are attributed to him by traditional natural law. And he is also incapable of that which *Hobbes* subscribes to, namely, that they would be animated by *pride*, by the desire to lord it over others, as he says in the immediate sequel. Yes?

**Mr. Reinken:** “In this state every man, instead of being sensible of his equality, would fancy himself inferior. There would therefore be no danger of their attacking one another; peace would be the first law of nature.”

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. I, ch. 2, 3–4.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. I, ch. 2, 4.

LS: But not on the Hobbian ground.<sup>90</sup>

**Mr. Reinken:** “The natural impulse or desire which Hobbes attributes to mankind of subduing one another is far from being well founded. The idea of empire and dominion is so complex, and depends on so many other notions, that it could never be the first which occurred to the human understanding.”<sup>xv</sup>

LS: Yes. That foreshadows Rousseau’s much more detailed critique of Hobbes in the *Discourse on the Origin of Inequality*. But the chief point is the same in Montesquieu. Let me say it on the basis of Rousseau. There it is more developed. Hobbes says man is by nature *asocial*, pre-social, and *rational*, in the *wide* sense of the word, which doesn’t mean reasonable, but having the power of reason. And Rousseau simply says: if man is by nature *asocial*, he must be *arational* (because no-reason is outlandish). And that is implied here.

But the particular point is this: Hobbes assumes that man is *primarily* concerned with superiority to others, and he needs only the shock of fear in order to come to his senses and not to wish to be superior, but to be satisfied with equality. And Montesquieu’s point is that the idea of empire and domination is so composed<sup>91</sup> [and] complex that primary man could not possibly affect it. This is the first point.<sup>92</sup>

The first natural law is *peace*. But here clearly is a law which will not be *transgressed* because they run away from each other by natural necessity. So there will be no fighting—if that is the meaning of “peace.” Now the next point, what is the second natural law.

**Mr. Reinken:** “Next to a sense of his weakness man would soon find that of his wants. Hence another law of nature would prompt him to seek for nourishment.”

LS: This is the second natural law. Whose discovery is this second natural law?

**Student:** John Locke.

LS: Yes, sure, Locke. Hobbes was *aware* of that, but he did not speak as emphatically of it as Locke did. And again you see a natural law which is naturally not transgressed. Good. And then there is a *third* one, the last paragraph of this chapter:

**Mr. Reinken:** “Besides the sense or instinct—”

LS: No, I think we must only mention the third. The third is sexual desire.<sup>93</sup> This is again something which will by nature not be transgressed.<sup>94</sup> Fourth point:

**Mr. Reinken:** “Besides the sense or instinct which man possesses in common with brutes, he has the advantage of acquired knowledge—”

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<sup>xv</sup> *Spirit of Laws*, vol. I, bk. I, ch. 2, 4.

**LS:** No. “Apart from his *sentiment*, which men have to begin with, they eventually arrive at knowledge.”

**Mr. Reinken:** “—eventually arrive at knowledge; and hence arises a second tie, which the other animals have not. Mankind have therefore a new motive of uniting; and a fourth law of nature results from the desire of living in society.”<sup>xvi</sup>

**LS:** No. “The desire to live in society *is* a fourth natural law.” So in other words there may be “n” more natural laws. We do not know. He doesn’t say these four are all. But after all, since if the others were very important he would have mentioned them, we may say these are *the* natural laws, according to Montesquieu. And the question is therefore—and this is a question which we must address to Montesquieu—how does he arrive at *specific and interesting* moral [laws]<sup>95</sup> by starting from this rather poor basis? That is a problem which we have to solve.

And now we have to consider the *last* chapter, “On the Positive Law.”<sup>96</sup>

**Student:** Doesn’t the last natural law bring about this consequence, that the natural laws are such, that they bring about that man *necessarily*, by the course of nature, *leaves* the state of nature?

**LS:** Yes, all right. And that is in a way indicated in the fourth natural law, isn’t it?

**Student:** So this would be different from Rousseau’s teaching, where the exit from the state of nature is by *accident*?

**LS:** In a way, yes, but still after these accidental changes have taken place, it is necessary.

**Student:** But I wonder if it has this importance: For Rousseau the state of nature somehow—in a way I don’t understand—still maintains a certain authority as the natural state of man, and therefore the state where he is perhaps most happy. But in Montesquieu this is impossible because the state of nature necessarily *forces* man out of the state of nature.<sup>97</sup> So it couldn’t, by virtue of the fact that it’s the state of nature, be good for man.

**LS:** No, surely not. But what about the *law* of nature, the natural laws? Are they valid only in the state of nature? I mean we know something about<sup>98</sup> the need for food and<sup>99</sup> other things. So the laws of nature would still be valid in civil society. But which particular *norm* could they give for civil society? That is a question which we will have to take up now. Now let us read the first paragraph of chapter 3.

**Mr. Reinken:** “As soon as men enter into a state of society, they lose the sense of their weakness; equality ceases, and *then* commences the state of war.”<sup>xvii</sup>

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<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. I, ch. 2, 4–5.

<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 5.

**LS:** Yes. This is the key change. The state of war presupposes a certain development of man; [it] presupposes that men live in society.<sup>100</sup> [The question is] can natural law *survive* the state of nature?<sup>101</sup> In another utterance—in a manuscript somewhere—Montesquieu has said (I read this to you): “It became necessary for men to unite through *conventions*, or contracts, and to do through the means of *civil* law what the *natural* law had done to begin with.”<sup>xviii</sup> This is not exactly what he suggests here, but it shows one thing: that any end which natural right or natural law pursues must *also* be the end of positive law. But how could this be a norm?<sup>102</sup>

In the state of nature there were these four natural laws, four natural impulses, *equal* in all men. Would this not lead to the suggestion that the norm for positive law is that it supply or further the equality of men in these respects: regarding self-preservation,<sup>103</sup> food,<sup>104</sup> [and] sex (these are the three chief points)? In other words something foreboded the greatest happiness of the greatest number<sup>105</sup>. Whether this is Montesquieu’s view [or not] we are in no way able to say at this early stage. But for Montesquieu, this poor natural law, sketched in chapter 2, *does* supply a norm. But there are grave complications, as we shall see very soon.

Now let us turn to the paragraph after the next. There are two kinds of wars, he says, one *within* each society and one of society against others.

**Mr. Reinken:** “These two kinds of war give rise to human laws. Consider this inheritance of so great a planet, which necessarily contains a variety of nations; they have laws relating to their mutual intercourse, which is what we call the law of nations. As members of a society, that must be properly supported, they have laws relating to the governors and the governed, and this we distinguish by the name of political law. They have also another sort of law as they stand with relation to each other, by which is understood the civil law.”<sup>xix</sup>

**LS:** He says the *citizens* have among themselves the civil law. Now the key point here, which goes almost without saying<sup>106</sup> is this: there are necessarily many independent societies, what we call sovereign states. That is taken for granted because the planet is so great. How could all men be governed [or] administered from one center? So this is taken for granted. And therefore war is a natural law.<sup>107</sup> Now the next paragraph, about the international law:

**Mr. Reinken:** “The law of nations is naturally founded on this principle: that different nations ought in time of peace to do one another all the good they can, and in time of war as little injury as possible, without trespassing their real interests.”<sup>xx</sup>

**LS:**<sup>108</sup> Now you see<sup>109</sup> Montesquieu simply *affirms* this here: that natural law must be within the limits of the possible. You may ask him: *Why* must it? He doesn’t say that, and he can’t say because everyone—at least every man of any *standing*—would have agreed

<sup>xviii</sup> Source unknown.

<sup>xix</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 5.

<sup>xx</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 5.

with it; because it is the idea *underlying* international law. International law is not meant to be an instrument of *inhumanity* but rather of humanity. And one can only say that to understand this definition of international law one would have to link it up with the right of self-preservation as the basic moral phenomenon, as a right equally enjoyed by *all* men. And therefore we have to consider always the right of self-preservation of everybody else—*unless* it comes into conflict with my right of self-preservation. And then *my* right of self-preservation has the right of way, which Montesquieu admits here, as you see: “—without doing harm to *their* true interests.” And this is quite a qualification, but a necessary one.<sup>110</sup> Let us see the paragraph after this:

**Mr. Reinken:** “The object of war is victory, that of victory is conquest, and that of conquest preservation. From this and the preceding principle all those rules are derived which constitute the law of nations.”<sup>xxi</sup>

**LS:** This is again something which was granted generally, and you would find this developed at greater length in Locke’s *Second Treatise*, the chapter on conquest. Yes?

**Student:** Exactly what does he mean there by preservation?

**LS:** Of *life*.

**Student:** Does that mean preservation of the conquered territory or preservation of the—

**LS:** Of the *people*<sup>111</sup>. But since they couldn’t possibly preserve themselves without having fields and houses even, that also goes with it. But the primary thing is preservation of *life*.

**Student:** Is he saying that ultimately the object of all war is conquest, and the object of conquest is preservation? Now this would not be in keeping with what I understood was within the object of conquest.

**LS:** Read the chapter on conquest in Locke’s *Treatise*. Of course the conquerors, generally speaking, are not concerned with preservation. But they ought to be concerned. That’s the point. And the law as law does not simply describe or copy practice, but *regulates* practice by law. Preservation means preservation of life. So therefore you kill people, of course, as long as they fight—armed soldiers fighting. But the moment they lay down their arms—and surely the civilians, who are wholly unarmed, cannot be killed. These laws have now become technologically *meaningless*.

**Student:** If each nation wars for victory, and if each victory is for conquest, and if each conquest is for preservation, doesn’t that sound contradictory?

**LS:**<sup>112</sup> There is a difference. The victorious side will *preserve* the others, the vanquished, but still they will *take away* quite a bit. So it can be profitable to make war even under these conditions. As long as this relatively *mild* law of nations had some meaning—as the

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<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 5.

eighteenth, nineteenth-century European nations still waged war—they didn't *exterminate* the civilian population. No one thought of it. And yet it made a difference whether one won or lost the war because mere *life*—including the bit of food which you need to keep body and soul together—is not so very *much*.<sup>113</sup> There are only those needs. But gold and diamonds and factories—these can be taken away, as Locke makes clear. I don't see the difficulty.

**Student:** Well, it still seems that in that paragraph when he talks about the object of conquest being preservation he means the preservation of the conquering people. In other words, for their preservation they are allowed to wage war, gain victory, and make a conquest. And that's somehow a qualification of what—

**LS:** In other words, the wording *would* bear out what you say, but it would also bear out what *I* say. It's ambiguous. Does it mean the preservation of the conqueror or the preservation of the conquered?

**Student:** It could be the preservation of the balance between the two.

**LS:** No, that would be too complicated. I think it means the preservation of human beings. That should be it. But if you consider the *preceding* paragraph, I think you would have to say he must at least *also* be thinking of the preservation of the vanquished. Otherwise why should they do each other the *minimum* of harm in war? But you are right; the other interpretation is surely correct: that the motive for conquest is conservation—preservation in the wide sense—because it's already really developed in Locke<sup>114</sup>. Self-preservation can be *bare* self-preservation, but it can also be *comfortable* self-preservation. And when you want to preserve yourself comfortably you obviously need much more than what you need for *bare* self-preservation. So that its<sup>115</sup> [rub]; it can be extended. Yes?

**Mr. Reinken:** "All countries have a law of nations, not excepting the Iroquois themselves, though they devour their prisoners. For they send and receive ambassadors and understand the rights of war and peace. The mischief is that their law of nations is not founded in true principles."<sup>xxii</sup>

**LS:** In other words, if they were founded on true principles, the prisoners would not be eaten, but preserved.<sup>116</sup> What are the other points?' There will be a *political* right for each society, [but] it would not be identical with what we would call constitutional law.

**Mr. Reinken:** "Besides the law of nations relating to all societies, there is a political law for each. No society can subsist without government. 'The union of all particular forces,' as Gravina well observed, 'constitutes what we call the political state.'<sup>xxiii</sup>

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<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 5.

<sup>xxiii</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 6.

**LS:** That's correct; the translation's fine. Gravina was an Italian jurist, and from what I heard about him not a great luminary. And why Montesquieu does him the honor to quote him twice right at the beginning of his study there is no explanation.

Now, then, later on he gives another general definition of law: "*la loi en général*."

**Mr. Reinken:** "Law in general is human reason, inasmuch as it governs all the peoples of the earth: The political and civil laws of each nation ought to be only the particular cases in which human reason is applied."<sup>xxiv</sup>

**LS:**<sup>117</sup> Now you see, this is a very *strange* definition of law in general, contradicting that given in chapter 1. Law in general is *human* reason. From this point of view, there could not be laws of mechanics. This is the usage followed by Hobbes himself. Hobbes never uses the term "natural law" in the sense of, say, Newtonian law.

**Student:** Why? Is Montesquieu influenced by Newton?

**LS:** That is the same as asking: Is there anyone writing in the twentieth century not "influenced" by Einstein? People may know more or less, and at that time it was much easier for everyone to know *more* because of the less-advanced stage of specialization.

Now, what is this point here? Laws here are only *for* men and of human origin. This is the Hobbian usage. Now if law is human reason, and natural law is *sentiment* (as it seems), it would follow that there is no natural law proper. But this does not mean legal positivism—that<sup>118</sup> there is no possibility of criticizing any positive law. All<sup>119</sup> [that] is legal is at the same time just. There *is* one because it appears from the very formulation. If human reason *applied* to this reason, we are confronted with a problem you can't solve—*reasonably* or *unreasonably*<sup>120</sup>. And so, for example, if you would make a law saying that people whose names begin with the first two letters of the alphabet have to pay three times the taxes of everybody else, that is an irrational law.

**Student:** You can ask if this would change the role of human reason here. Wouldn't this merely change the facts of the situation? For example, if, say, the impulses of men, once they involve—

**LS:** Yes, the point which one must think [of] in order to understand Montesquieu would be very obvious here. For example, criminal law. Criminal law has the purpose to punish the criminals—but the criminal, not the innocent. And now there may be certain methods of discovering criminals which are unreasonable for this purpose—say torture where it depends not on your innocence but on your nerves or such things whether you will confess. It's unreasonable.<sup>121</sup> Quite a few things can be asserted by this former notion of reason. Whether that is sufficient for it or not, we must wait and see.<sup>122</sup>

**Mr. Reinken:** "They should be so far proper to the people for whom they are framed that it should be a great chance if those of one nation could suit another."

<sup>xxiv</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 6.



LS: Now skip the next paragraph.

**Mr. Reinken:** “They should be in relation to the physical character of each country.”

LS: Let me try to translate it a bit more carefully: “they ought to be *relative*—” You see, not all laws are by *nature*, are *in fact*, relative. They *ought to be* relative. Go on.

**Mr. Reinken:** “—to the physical character of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have relation to the degree of liberty which the constitution will bear.”

LS: He gives here a survey of the subject of the whole law. And the next one: “This is what I undertake to do in this work—”

**Mr. Reinken:** “This is what I have undertaken to perform in the following work. These relations I shall examine.”

LS: “I shall examine *all* these relations.”

**Mr. Reinken:** “All these together constitute what I call the spirit of law.”<sup>xxv</sup>

LS: Now we have a definition of what he means by this word, “the *spirit* of law”: the *relation* of the laws to *non-legal* phenomena; or, let us say, the *relevant* relations of laws to *non-legal* phenomena. That is what we want to study.

The *term*, “spirit of laws,” was used by an Italian, Doria, in a work, *Vita Civile*, as I know from the literature. I have never had it in my hand, so I cannot say how important it is.<sup>xxvi</sup>

Now he will examine first the relations which laws have with the nature and *principle* of each government.<sup>123</sup> This principle has a supreme influence on the law. I shall make an effort to note it well. In other words, the primary relations of laws are those to the form of government—the *political* relations. But the political ones are not the *only* ones. The climate, the religion, etc. are all important. The spirit of laws means to understand the laws in terms of *non-legal* phenomena, *political* as well as nonpolitical,<sup>124</sup> [in the widest sense]. One can say this is<sup>125</sup> [close to] what *sociology* of law is trying to do. But that would be too *narrow*, because sociology of law is still one special part of sociology, whereas Montesquieu is concerned with the *whole* of society.

I have spoken of the *dependence* of Montesquieu on Hobbes, and on the particular things following from Hobbes. But there is also a very profound difference. Everyone of you when he opens Montesquieu must try to discover the difference between Montesquieu on

<sup>xxv</sup> *Spirit of Laws*, vol. I, bk. I, ch. 3, 6–7.

<sup>xxvi</sup> Paolo Mattia Doria (1667–1746), in his *Vita Civile* (1710), applied and extended the thought of Machiavelli to criticize the kingdom of Naples.

the one hand and Hobbes and Locke on the other. Hobbes and Locke develop what one would have to call, in the language of the seventeenth century, a natural constitutional law. The Hobbian doctrine of sovereignty, for example, which is the core of Hobbes's political doctrine, is law. The sovereign *may* do this and this and this, and resistance to it is unjust. But it is a *natural* constitutional law; it's not a constitutional law established by this particular society and for it, but a constitutional law for *every* possible political society if it wants to be a stable political society.

Now men like Hobbes and Locke think that what you can say about political societies as *such* is very much. Montesquieu, as it were, says that what you can say about political society as such is very *little*. You have always to look at the particular society to see whether it is of this kind or that kind in order to speak meaningfully about it. There is an *immense* variety, due to the variety of circumstances, and that affects political theory decisively.

Let us remember one point: On the basis of Book I, we must say that very little of natural law or moral law in the traditional sense remains. What remains is this little bit we have in Hobbes and Locke: self-preservation with some minor additions. How does Montesquieu arrive at meaningful political norms by starting from this basis? That is the question we must try to answer as we go along.<sup>126</sup>

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<sup>1</sup> Deleted "The paper should be as the length of about twenty minutes, which means it should be seven typewritten pages long, double spaced. That's about twenty minutes if it is read at the pace at which one can follow. Either you can give a simple survey of the section, and if you do this well, that's all right. But you can also concentrate on one particular point which you feel is especially important, and not give the sum. That is left to you. Those who take the seminar for the first time will hear some other papers by students who have read papers in my class before and will get some notion of what I expect students to do. The paper should be as the length of about twenty minutes, which means it should be seven typewritten pages long, double spaced. That's about twenty minutes if it is read at the pace at which one can follow. Either you can give a simple survey of the section, and if you do this well, that's all right. But you can also concentrate on one particular point which you feel is especially important, and not give the sum. That is left to you. Those who take the seminar for the first time will hear some other papers by students who have read papers in my class before and will get some notion of what I expect students to do."

<sup>2</sup> Changed from "What the difficulty is."

<sup>3</sup> Deleted "Human nature. He refers to human nature?"

<sup>4</sup> Moved "directly."

<sup>5</sup> Changed from "he is."

<sup>6</sup> Deleted "though."

<sup>7</sup> Deleted "sure."

<sup>8</sup> Deleted "stump up and."

<sup>9</sup> Deleted "becomes."

<sup>10</sup> Deleted "That."

<sup>11</sup> Deleted "similarities."

- 
- <sup>12</sup> Moved “rightly.”
- <sup>13</sup> Deleted “as if.”
- <sup>14</sup> Deleted “that.”
- <sup>15</sup> Deleted “that.”
- <sup>16</sup> Deleted “as if there existed.”
- <sup>17</sup> Deleted “while saying it.”
- <sup>18</sup> Deleted “Good. Now.”
- <sup>19</sup> Deleted “And now.”
- <sup>20</sup> Deleted “Good.”
- <sup>21</sup> Deleted “and.”
- <sup>22</sup> Deleted “way.”
- <sup>23</sup> Changed from “are in existence.”
- <sup>24</sup> Deleted “however.”
- <sup>25</sup> Deleted “as you see.”
- <sup>26</sup> Deleted “you see.”
- <sup>27</sup> Deleted “of course.”
- <sup>28</sup> Deleted “of course.”
- <sup>29</sup> Deleted “the.”
- <sup>30</sup> Deleted “that.”
- <sup>31</sup> Deleted “Yes?”
- <sup>32</sup> Deleted “of course.”
- <sup>33</sup> Deleted “Now.”
- <sup>34</sup> Deleted “Natural law has nothing to do with reason.”
- <sup>35</sup> Deleted “Yes?”
- <sup>36</sup> Deleted “Yes?”
- <sup>37</sup> Deleted “LS: ‘Of religion,’ of religion. Student: ‘—By the laws of religion.’”
- <sup>38</sup> Deleted “Yes.”
- <sup>39</sup> Moved “back.”
- <sup>40</sup> Deleted “himself.”
- <sup>41</sup> Deleted “laws.”
- <sup>42</sup> Deleted “look here.”
- <sup>43</sup> Deleted “No.”
- <sup>44</sup> Deleted “that.”
- <sup>45</sup> Deleted “and.”
- <sup>46</sup> Deleted “of the Old Testament Law.”
- <sup>47</sup> Deleted “say to take the term of the development (Kant).”

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<sup>48</sup> Changed from “That doesn’t make sense?”

<sup>49</sup> Deleted “natural law—.”

<sup>50</sup> Deleted “perhaps, in.”

<sup>51</sup> Deleted “Chapter 3, Paragraphs 4 and 5—no, the main passage is later.”

<sup>52</sup> Deleted “and following. Locke says”

<sup>53</sup> Deleted “Now.”

<sup>54</sup> Deleted “of course.”

<sup>55</sup> Deleted “is.”

<sup>56</sup> Deleted “as it were.”

<sup>57</sup> Deleted “but having.”

<sup>58</sup> Deleted “But it.”

<sup>59</sup> Deleted “in the discussion.”

<sup>60</sup> Deleted “Student: Didn’t you go through this with Mr. H., and he found actually one instance in Cicero ... ?

LS: It’s possible. You see, we all have to depend on our memories, and in a way one has more memories when he is old. But on the other hand, the memory is not as effective as when one is young. That’s very strange. We have more to remember, but we don’t remember as surely. And so the simple thing is to look [it] up [in] the dictionary. Yes?”

<sup>61</sup> Deleted “That is very complicated, and therefore.”

<sup>62</sup> Deleted “what does he say?”

<sup>63</sup> Deleted “have reminded him.”

<sup>64</sup> Deleted “That is his point.”

<sup>65</sup> Deleted “by.”

<sup>66</sup> Deleted “and Hobbes.”

<sup>67</sup> Deleted “Now.”

<sup>68</sup> Deleted “a.”

<sup>69</sup> Deleted “does.”

<sup>70</sup> Deleted “that.”

<sup>71</sup> Deleted “on.”

<sup>72</sup> Deleted “as it were.”

<sup>73</sup> Deleted “I mean.”

<sup>74</sup> Changed from “Hobbes and the followers of Hobbes.”

<sup>75</sup> Deleted “Now.”

<sup>76</sup> Deleted “as.”

<sup>77</sup> Deleted “law.”

<sup>78</sup> Deleted “as it were.”

<sup>79</sup> Deleted “this.”

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- <sup>80</sup> Deleted “from.”
- <sup>81</sup> Deleted “as such.”
- <sup>82</sup> Deleted “he is.”
- <sup>83</sup> Deleted “Now.”
- <sup>84</sup> Deleted “as it were.”
- <sup>85</sup> Deleted “The next.”
- <sup>86</sup> Deleted “Yes.”
- <sup>87</sup> Deleted “of course.”
- <sup>88</sup> Deleted “i.e.”
- <sup>89</sup> Changed from “man as he primarily is man.”
- <sup>90</sup> Deleted “don’t you see? Yes?”
- <sup>91</sup> Deleted “so.”
- <sup>92</sup> Deleted “Now.”
- <sup>93</sup> Deleted “Yes? And.”
- <sup>94</sup> Deleted “Yes?”
- <sup>95</sup> Added “laws.”
- <sup>96</sup> Deleted “But let me make sure whether there is any point which—.”
- <sup>97</sup> Deleted “LS: Yes.”
- <sup>98</sup> Deleted “food and.”
- <sup>99</sup> Deleted “the need for the.”
- <sup>100</sup> Deleted “Now.”
- <sup>101</sup> Deleted “That’s;” moved “the question.”
- <sup>102</sup> Deleted “Let us consider this before we go on. How could this be a norm?”
- <sup>103</sup> Deleted “regarding.”
- <sup>104</sup> Deleted “regarding.”
- <sup>105</sup> Deleted “foreboded it.”
- <sup>106</sup> Deleted “but it should be mentioned.”
- <sup>107</sup> Deleted “Yes?”
- <sup>108</sup> Deleted “Yes.”
- <sup>109</sup> Deleted “than.”
- <sup>110</sup> Deleted “Yes?”
- <sup>111</sup> Deleted “of the *people* there.”
- <sup>112</sup> Deleted “Well, you see.”
- <sup>113</sup> Deleted “Yes, I mean.”
- <sup>114</sup> Deleted “you know.”
- <sup>115</sup> Deleted “rubber.”

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<sup>116</sup> Deleted “And now, then.”

<sup>117</sup> Deleted “Yes.”

<sup>118</sup> Deleted “is.”

<sup>119</sup> Deleted “what.”

<sup>120</sup> Deleted “capriciously.”

<sup>121</sup> Changed from “It’s an unreasonable thing. You know.”

<sup>122</sup> Deleted “And now let us continue a bit.”

<sup>123</sup> Deleted “And.”

<sup>124</sup> Deleted “very wide.”

<sup>125</sup> Deleted “something.”

<sup>126</sup> Deleted “Is there any point you would like to bring up? For next time we shall deal with the paper on Books II and III, and on Thursday the one on Books IV and V.”

**Session 3: January 11, 1966**

**Leo Strauss:**<sup>1</sup> It is obviously necessary to contrast Aristotle with Montesquieu and for this purpose one must understand Aristotle. But you [probably Mr. Bruell] understand Aristotle's *Politics* unusually well. And you have also shown an understanding of another great thinker prior to Montesquieu, and that is Machiavelli, whose understanding is not as obvious for understanding Montesquieu. But you rightly saw that<sup>2</sup> Montesquieu's doctrine of virtue is a modification of what Machiavelli called *virtù*, the Italian word for virtue, which means exactly not moral virtue but a political virtue in such a wide sense that any gangsterism which is conducive to the polity would fall under virtue, *virtù* in Machiavelli's sense.<sup>3</sup>

Now let us begin<sup>4</sup> [with] the connection of Book II with Book I. What did we learn in Book II which is most important? This: that natural law is identical with the fundamental pre-political needs of man, such as self-preservation, food, and so on. Now this proposition that political reflection must start with a recognition of these fundamental pre-political needs causes no difficulty today. I believe that every political scientist today would admit that: that man<sup>5</sup> [is] an organism, as they say now, and that the needs of this organism have to be considered in one way or the other by every politically acting man and by every theoretician.

This view is compatible with unqualified relativism as we can easily see from the present situation. But Montesquieu says one thing more than that natural law is identical with the fundamental pre-political needs of man. He says that it is identical to the fundamental pre-political needs of *every* man. And this causes a certain democratic bias. And this bias is<sup>6</sup> observable throughout the book and especially in the first two books.

Now what Montesquieu does in Books II up through VIII is in principle intelligible on the basis of Aristotle or Plato—<sup>7</sup> he raises [similar questions] but<sup>8</sup> [answers them in a different manner]. But the striking thing is<sup>9</sup> that whereas Plato's and Aristotle's reflections are all guided by the consideration of human excellence—or to use the more ordinary translation, of virtue—this orientation is no longer present in Montesquieu.<sup>10</sup> [So] how does Montesquieu arrive at any standards<sup>11</sup> [or] norms by starting from natural law as defined in the first book?

Now, to speak first of Book II, the laws which derive directly from the nature of the government—the nature of government comes first and these laws, as well as any other laws, come after—corresponds to the Aristotelian distinction between laws and the regime. The fundamental political fact is the regime—the democracy, oligarchy, or whatever it may be—and the laws must be relative to the regime if they are to fulfill their function. For example, laws must be democratic if they are to sustain a democracy, or they must be monarchic if they are to sustain a monarchy. And this is true not only of the political laws in the narrow sense, like laws of succession in monarchy or laws of

participation in voting in a democracy, but<sup>12</sup> [also] applies to all kinds of laws, as we will see as we go on.

To mention this right away:<sup>13</sup> Aristotle regards as a fundamental phenomenon the regime, and the regime is what it is by virtue of its end, its *telos*. A democracy is a regime dedicated to freedom, according to Aristotle. So, the end is decisive. This is radically changed by Montesquieu, as we shall see right away and, of course, Mr. B. [probably Mr. Bruell] has noted that. The end is replaced in Montesquieu by what he calls the principle, i.e. the efficient cause.<sup>14</sup>

Montesquieu's division of the various kinds of government differs from Aristotle's division along the lines stated by Mr. B. Montesquieu puts the emphasis on monarchies<sup>15</sup> by making two of the three monarchies—what he calls monarchy and despotism—and by subordinating democracy and oligarchy to one thing called republic.

One can say one thing for Montesquieu, for we must not only criticize him, we must also defend him. He frees Aristotle's scheme from its "provincialism." You remember the Aristotelian scheme: kingship, oligarch, democracy; tyranny, oligarch, democracy. Here you have a preponderance of republican regimes—four are republican. And in Montesquieu the situation is reversed. Why? Well, look at the whole world<sup>16</sup> after 1748. The world was ruled chiefly by monarchies, both in space and time. Where did you find republics? In Greece, in Rome for some time,<sup>17</sup> in Italy a few, [and] in a way some German towns. But look at the bulk of the globe: monarchies everywhere. And everyone could say that Aristotle looks at matters from a very provincial, Greek point of view.<sup>18</sup> Montesquieu restores the balance. Now the situation has changed a bit in the meantime, as we all know. But still, whether these are democracies which we see in these large masses of land is a long question. I think we can leave it at that.

And you see that he puts the monarchic government in the center<sup>19</sup> [for] a very plausible reason—he lives in France, and, as a good citizen, is primarily concerned with the improvement of the French regime.<sup>20</sup>

In chapter 2, in the third paragraph there is this terse sentence: "The will of the sovereign is the sovereign himself." What does he mean by that?<sup>21</sup> Is not the sovereign monarchy the king, as a whole? Why must he say, no, not the king as a whole, but his will? Yes.

**Student:**<sup>22</sup> Not his passions. No, that is not right.

**LS:**<sup>23</sup> Will is used here in a very wide sense so it could include the passions.

**Student:** Tyrants govern according to their passions and their mere sentiments.

**LS:** The sovereign here means also the sovereign in a despotic situation.

**Student:** As opposed to reason?



**LS:** That is the politically relevant part that could be related to the public good. Louis XV playing with Madame du Barry is just not part of political affairs.

Yes, and also the great questions which arise, which might even arise in despotism is what, say, Stalin said when completely drunk about a servant about to be executed, is this the will of the sovereign? Because when he is sober he might say no.

It means, of course, also not reason. It is irrelevant whether the will is reasonable or unreasonable. It is decisive that he willed.

The examples of democracies are all ancient. The point that he makes, which is important to remember against some modern critics of democracy, is that according to Montesquieu the people elects by choice better men than the monarch does. In other words he would say, look at the list of great statesmen—as it were the book titles of Plutarch’s biographies—do you find such a list among the kings, especially the kings in modern times? So, from this point of view, one can say that Montesquieu is more democratic than Plato and Aristotle.

But, it is also clear from the discussion of democracy in that chapter that the democracy which Montesquieu favors is a qualified democracy. Could you restate for our benefit the main points you made in your paper?

**Student:**<sup>24</sup> He sets up very elaborate controls, or speaks approvingly of these legislators who control very strictly, on what questions the people could vote and the relative weight even of the votes of the various classes according to wealth.

**LS:** And what does this name Servius Tullius, which doesn’t mean much to most of the students here, mean?

**Student:** All I know is that he was a legislator or—

**LS:** An early Roman king.

**Student:** He set up classes: a few of the richest people would be in the first class, and a larger number of moderately rich, and then a greater number of the moderately poor, and then the whole mass of the poor in the last. And each class were given equal votes. So, in other words, by calling this gerrymandering one would make an understatement.

**LS:** But this belongs to the essence of democracy, as Montesquieu understands it. He does not think of “one man, one vote” democracy, but what was popularly called a democracy throughout the tradition, because it was not monarchic.

There is an observation about parties toward the end of Book II, the last paragraph before the end of chapter 2.

**Mr. Reinken:** “Intriguing in a senate is dangerous; it is dangerous also in a body of nobles; but not so among the people, whose nature is to act through passion. In countries where they have no share in the government, we often see them as much inflamed on account of an actor as ever they could be for the welfare of the state. The misfortune of a republic is when intrigues are at an end—”<sup>i</sup>

**LS:** Intrigues means here also parties. You know that the goodness of parties was generally questioned in the past. And the first man of whom I know to defend parties was Machiavelli, with special regard to Rome [and] the conflict between the plebs and the patricians. And, of course, later on, on the basis of the British experience there came a defense of parties which culminates, in a way, in Burke’s famous statements. But, generally speaking, parties were regarded as a cancer of the body politic. To some extent even in the *Federalist Papers* you will find this, in number eleven. Good.

Now let us see in chapter three, paragraph six.

**Mr. Reinken:** “In a republic, the sudden rise of a private citizen to exorbitant power produces monarchy, or something more than monarchy. In the latter the laws have provided for, or in some measure adapted themselves to, the constitution; and the principle of government checks the monarch: But in a republic, where a private citizen has obtained an exorbitant power, the abuse of this power is much greater, because the laws foresaw it not, and consequently made no provision against it.”<sup>ii</sup>

**LS:** This is one of many examples of [a] normative statement,<sup>25</sup> [a] value statement, which Montesquieu makes here. What is the basis of that? Does this make sense that the power must be limited? That is the premise: powers ought to be limited. What is the basis of that? After all he is not an orator; he is a philosopher, and he must have reasons.

**Student:** Political freedom is very important and for that to exist there must be some limitation.

**LS:** Why is political freedom important?

**Student:** For happiness.

**LS:** I do not believe that this is the reasoning here because he introduces freedom in a later consideration as a major theme.

**Student:** The survival of the state. If it departs from essential rules [and] the laws which produce its flourishing, down it goes.

**LS:** But what is flourishing?

**Student:** The regime.

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. II, ch. 2, 12.

<sup>ii</sup> *Spirit of Laws*, vol. I, bk. II, ch. 3, 14.

**LS:** Yes, but this particular regime? In other words, if I develop that, men must live in political society. And if they live in a political society, they either live in a republic or in a monarchy or in a despotism. And therefore<sup>26</sup> whatever is required for each regime is justified by the character of that particular regime. But, you see, in a despotic government you have<sup>27</sup> an exorbitant power in the hands of the despot. And why not despotism? Why limited power, either in a monarchy or a republic?

**Student:** Well, could it be simple preservation of life.

**LS:** Yes, but he uses a more political term: to prevent oppression of the people. That is a consideration which goes through—oppression of the people is bad. And if one would go to the ultimate reason, it would be that the right to self-preservation belongs equally to each and therefore it must be respected in each case.

Now let us see toward the end of chapter three.

**Mr. Reinken:** “Aristocratic families ought, therefore, as much as possible, to level themselves in appearance with the people.”

**LS:** Yes, but it is much more terse. “Aristocratic families ought then to be people as much as possible.” They ought to be people.

**Mr. Reinken:** “The more an aristocracy borders on a democracy, the nearer it approaches perfection: and, in proportion as it draws towards monarchy, the more is it imperfect.

“But the most imperfect of all is that in which the part of the people that obeys is in a state of civil servitude to those who command, as the aristocracy of Poland, where the peasants are slaves to the nobility.”<sup>iii</sup>

**LS:** Yes, and, therefore, they will be ruthlessly oppressed. That’s a defective thing and the ultimate reason would be natural law as defined [or] intimated in the preceding book. Yes?

**Student:** Going back to paragraph six, is there implied here in any way that somehow the preservation of the regime, that is the preservation of regimes except the despotic regime, is good in itself? And the sudden rise in power of a common man somehow endangers the existence of the regime, and in that case is bad?

**LS:** We have not yet any evidence for that. But that there must be some regime is clear, because men need government. But what to think about changes of regimes, say revolutions, we have no basis yet.

**Student:** [Concerning] your inference that the reason powers ought to be limited to prevent oppression—going back to the equal right of self-preservation: could not the

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<sup>iii</sup> *Spirit of Laws*, vol. I, bk. II, ch. 3, 15.

reason [be that] the power ought to be limited<sup>28</sup> [not because of the] right of self-preservation, but<sup>29</sup> [because of] the desirability of maintaining the regime?

**LS:** Yes, but this wouldn't apply to despotism.

**Student:** No, it does not.

**LS:** Therefore it is not sufficient. Now let us turn to the discussion of monarchy which comes in chapter four. Now this is modeled on the French monarchy especially and contains some very beautiful descriptions of the spirit of the old French monarchy, [which] is a monarchy in contradistinction to a despotism<sup>30</sup> [because] there are intermediary powers between the king and the people, powers which exist by their own right and not merely by delegation of power on the part of the king. That is a crucial point.

In other words, these powers—intermediary [or] subordinate<sup>31</sup>—exist by virtue of the fundamental laws of the realm. And, as fundamental laws, they cannot be changed by any ruling king. The most natural intermediate power, he says, is that of the nobility. But there are others. Read the next paragraph.

**Mr. Reinken:** “There are men who have endeavored in some countries in Europe to suppress the jurisdiction of the nobility, not perceiving that they were driving at the very thing that was done by the Parliament of England. Abolish the privileges of the lords, the clergy and cities in a monarchy, and you will soon have a popular state, or else a despotic government.”<sup>iv</sup>

**LS:** So you see the intermediary powers include the clergy, not only the nobility, and also the municipalities. England<sup>32</sup>—I remind you of the statistical observation of Mr. B.<sup>33</sup>—has ceased to be a feudal monarchy and therefore is on the verge of becoming a republic, even a democracy. I believe this is a statement one can very well accept.

And then he speaks in the sequel of what the French do. He doesn't say the French, but he says a “great state in Europe.” But it is quite obvious that it is France. And they attack the patrimonial jurisdiction of the lords and the ecclesiastical jurisdiction. Now what about the ecclesiastic jurisdiction?

**Mr. Reinken:** “Far am I from being prejudiced in favor of the privileges of the clergy; however, I should be glad if their jurisdiction were once fixed. The question is not, whether their jurisdiction was justly established; but whether it be really established—”

**LS:** No, “whether one had reasons to establish it.” In other words, maybe the clerical jurisdiction is in itself something wrong.

**Mr. Reinken:** “—whether it constitutes a part of the laws of the country, and is in every respect in relation to those laws: whether between two powers acknowledged

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<sup>iv</sup> *Spirit of Laws*, vol. I, bk. II, ch. 4, 16.

independent, the conditions ought not to be reciprocal; and whether it be not equally the duty of a good subject to defend the prerogative of the prince, and to maintain the limits which from time immemorial have been prescribed to his authority.”

**LS:** In other words, in a monarchy, the ecclesiastical power, however questionably established, might be good as a limitation of the royal power. Go on.

**Mr. Reinken:** “Though the ecclesiastic power be so dangerous in a republic, yet it is extremely proper in a monarchy, especially of the absolute kind. What would become of Spain and Portugal, since the subversion of their laws, were it not for this only barrier against the incursions of arbitrary power? A barrier ever useful when there is no other: for since a despotic government is productive of the most dreadful calamities to human nature, the very evil that restrains it is beneficial to the subject.”

**LS:** Yes, he could not be stronger. In other words, it is a necessary evil. Yes.

**Mr. Reinken:** “In the same manner as the ocean, threatening to overflow the whole earth, is stopped by weeds and pebbles that lie scattered along the shore, so monarchs, whose power seems unbounded, are restrained by the smallest obstacles, and suffer their natural pride to be subdued by supplication and prayer.”<sup>v</sup>

**LS:** Do you understand this strange remark about ecclesiastical power? Another great political scientist in our age has expressed the same thought in a different way. Do you know [who]? Well, Stalin [did] when [he] raised the question of how many divisions of the Pope. That is the same idea. It is a power which, from the point of view of sheer power, could easily be overcome but for some strange reason into which he doesn’t go it is a power.

Now was this the point where you said is the first mention of liberty? In the immediate sequel? Yes. This is connected with what we read before.

**Mr. Reinken:** “The English, to favor their liberty, have abolished all the intermediate powers of which their monarchy was composed. They have a great deal of reason to be jealous of this liberty; were they ever to be so unhappy as to lose it, they would be one of the most servile nations upon earth.”<sup>vi</sup>

**LS:** This is<sup>34</sup> not fully intelligible because we haven’t heard anything yet about what freedom is. That will be discussed later, especially Book XI, and we must leave it open.

What was your general remark about the references to England, Mr. B.?

**Student:**<sup>35</sup> It seemed to me that there was no place in Montesquieu’s classification for England.

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<sup>v</sup> *Spirit of Laws*, vol. I, bk. II, ch. 4, 16–17.

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. II, ch. 4, 17.

**LS:** Correct. That is very true. That is a very provisional classification.<sup>36</sup> Montesquieu said in the preface, as it were, that he begins with the principles and then goes down to the particulars. That is not quite true. These principles, stated at the beginning, say, at the beginning of Book II, are not the highest point but are also a starting point for an ascent which comes later. That makes the subtlety of the book.

In the sequel he speaks of one particular institution of the French which limited their old kings, and that was the French Parliaments, judicial bodies. And here he makes a remark that the French Parliaments possess the “confidence of the people,” which implies<sup>37</sup> that the other parts, say the nobility and still less the kings or the king’s council, lacked that confidence. And that is an important point for having the necessary popular support.

Let us read the next paragraph on the despotic states.

**Mr. Reinken:** “Despotic governments, where there are no fundamental laws, have no such kind of depositary.”

**LS:** As the French Parliaments.

**Mr. Reinken:** “Hence it is that religion has generally so much influence in those countries, because it forms a kind of permanent depositary; and if this cannot be said of religion it may of the customs that are respected instead of laws.”<sup>vii</sup>

**LS:** What he suggests, if you read this as a whole, is that in despotisms religion is most powerful. Despotism is limited, above all, by religion; and he thinks,<sup>38</sup> here, of the examples which he knew: Turkey, Persia, Russia—

Now, in the last chapter of this book, he makes clear the low character of the despot: a fellow who devotes himself entirely to these sensual pleasures, especially to his seraglio, if he is a Muslim, or he may also have a seraglio if he is not a Muslim.<sup>39</sup> He is by nature lazy, ignorant, and voluptuous.<sup>40</sup> How this is tenable on the basis of experience of Peter the Great is hard to see. Yes?

**Student:** Is he in that chapter, in a sense comparing the Pope to an Oriental despot?

**LS:** Yes,<sup>41</sup> but you see here his technique. Montesquieu always makes a case against despotism.<sup>42</sup> It is not literally correct that a despot must be the lowest of the low. Let us read<sup>43</sup> the second paragraph.

**Mr. Reinken:** “It is related of a pope, that he had started an infinite number of difficulties against his election, from a thorough conviction of his incapacity. At length he was prevailed on to accept of the pontificate, and resigned the administration entirely to his nephew. He was soon struck with surprise, and said, ‘I should never have thought that these things were so easy.’ The same may be said of the princes of the East—”<sup>viii</sup>

<sup>vii</sup> *Spirit of Laws*, vol. I, bk. II, ch. 4, 17–18.

<sup>viii</sup> *Spirit of Laws*, vol. I, bk. II, ch. 5, 18.

**LS:** Yes, sure, this is a very nasty remark and a crucial implication that papal government is despotic government, in Montesquieu's sense. And one must read the remark in the first paragraph in the light of the second paragraph. He makes this extreme remark about despotism in order to counteract the authority and prestige of the papal power. We would<sup>44</sup> admit that there were great popes, but there were also popes that were not great. And in order to have a fair judgment which would lie in the middle, he prepares this by the extreme statement in the beginning paragraph. Now let us turn to Book III. Yes.

**Student:** In the last paragraph of chapter four, Montesquieu said, in despotic states where there aren't any fundamental laws and so forth. And in the last sentence of the first chapter<sup>45</sup> five, he says that the establishment of a vizier is in a state a fundamental law.

**LS:** Where is this?

**Student:** In chapter five, the last sentence of the first paragraph.

**LS:** Yes,<sup>46</sup> that is true. That is very good, what you say. But you see how cautious one must be in using Montesquieu's terms, because the terms may very well be ambiguous.<sup>47</sup>

A fundamental law may be a law, like,<sup>48</sup> [for example], the succession of the oldest son. That would be a fundamental law. But that can<sup>49</sup> be transgressed, especially if you have a Henry VIII—<sup>50</sup>with the help of Parliament he can modify that. But that the despot must have a vizier, that cannot be transgressed because, if he is such a fellow as is here described—lazy, voluptuous, and so on—he must have someone who does the business. So, let us keep<sup>51</sup> [in] mind this deep ambiguity that goes through the whole thought of Montesquieu. Laws which can be transgressed and laws which cannot be transgressed we see now, I have not seen this before, also applies to the term fundamental laws. Good. Mr. M.?

**Student:** But [about] the blind statement that it is the will of the sovereign which is the sovereign: doesn't some question come up when he talks about despotism as to who is really the sovereign?

**LS:**<sup>52</sup> This lousy creature who delegates all his power to his vizier, he is still legally perfectly able to turn this vizier out, have his throat slit, and make someone else a vizier.

**Student:** But until he does that, isn't the vizier really the sovereign?

**LS:** No<sup>53</sup>. That is a thing which lawyers discussed for a long time in many volumes—the difference between sovereign authority proper and delegated authority. The vizier is vizier only by virtue of the sultan's, or whatever he might be, appointment; whereas, the sultan is not by virtue of any human appointment. He rules entirely in his own right, the vizier rules in the sultan's right.

I repeat what Mr. B. said. First, that the end, what Plato and Aristotle call the end, is replaced by passions, which are efficient causes. And, more particularly, regarding virtue which is a passion in a democracy, this concept of virtue has gone through the Machiavellian concept *virtù*, which is political virtue without any immoral strings attached. Montesquieu's concept is very different from Machiavelli's, as you will see. But he has gone through that. His concept of political virtue is not the Platonic concept of political virtue, which is simply a lower form of virtue.<sup>54</sup>

Now, how did he arrive at these three principles: despotism, fear; monarchy, honor; and republic, virtue? Did we ever hear of fear as a principle of government anywhere prior to Montesquieu? Of course. What about honor? Well, that is also of course—I read to you a passage in the *Leviathan*, chapter fourteen:

“The force of words, being too weak to hold men to the performance of their covenants, there are in man's nature but two imaginable helps to strengthen it; and those are either a fear of the consequences of breaking their word, or glory or pride in appearing not to need to break it. This latter is a generosity too rarely found to presume, especially in the pursuers of wealth, command, or sensual pleasure, which are the greatest part of mankind. The passion to be reckoned upon is fear.”<sup>ix55</sup>

“Glory” or “pride” can also be called honor. Hobbes discounts it here but someone else could take a different view of it and<sup>56</sup> say that honor can be the<sup>57</sup> [result] of a government.<sup>58</sup>

What is that virtue of which he speaks first?<sup>59</sup> He has always the same order in these chapters: republics, monarchies, despotisms. So he speaks first of republics, i.e. virtue. Now what is that virtue? The first statement in chapter 3 is that virtue is probity.<sup>60</sup> Probity is<sup>61</sup> moral virtue or at least a very important part, what we would now call honesty.

But there is also one question which we must<sup>62</sup> take up, which I believe Mr. B. did not discuss. The principle of the various governments must animate the subjects; and that<sup>63</sup> means in a democracy also the rulers. But what about the two monarchic governments? Must the monarch also be animated by honor and the despot be animated by fear if these two forms of government are to work?<sup>64</sup>

**Student:** I don't think so. They don't have to be animated.

**LS:** Let us see whether this is correct. I have here another reference. Incidentally we have not gone over the question of the term, despotism, a term which<sup>65</sup> does not occur in Aristotle. Aristotle speaks of tyranny. And modern translators frequently translate the term “tyranny” in Plato and Aristotle by “despotism,” owing to their modern bias. Despotism is, in the classical meaning, the rule of a master over slaves, of a lord over his slaves. But the transition is this: political government should not be despotic government, and, therefore, despotic government over free men is in itself bad. And this makes a way free for<sup>66</sup> identifying despotism with tyranny. That is not quite the same.

<sup>ix</sup> Thomas Hobbes, *Leviathan*. Chapter XIV. Edition unknown.



In one of these discussions, the remonstrance of Fairfax and the council of officers, which I quote to you from Woodhouse, *Puritanism and Liberty*, page 459:

“On the Parliament’s part, their interest as well as duty was to discountenance irreligion, profaneness, debauchery, vanity, ambition, and time-serving; and to prefer such as were especially as otherwise given, namely, conscientious, strict in manners, soberness, seriousness, and of plain and public spirits. Contrary to these, on the King’s part, it was to countenance or connive at profaneness, looseness of manners, vanity and luxury of life, and prefer, especially as such as had a mixture of vain glory with a servile spirit, rendering them fit to serve another’s power and greatness for some enjoying of some share therein to themselves.”<sup>x</sup>

Here is fundamentally this notion which we have also in Montesquieu: republic, virtue; monarchy, a disguised form of vice. That is what Montesquieu will say here.

It is interesting that he has a criticism of puritanism in chapter 3 of Book III. You may perhaps read that.

**Mr. Reinken:** “A very droll spectacle it was in the last century to behold the impotent efforts of the English towards the establishment of democracy. As they who had a share in the direction of public affairs were void of virtue; as their ambition was inflamed by the success of the most daring of their members; as the prevailing parties were successively animated by the spirit of faction, the government was continually changing: the people, amazed at so many revolutions, in vain attempted to erect a commonwealth. At length, when the country had undergone the most violent shocks, they were obliged to have recourse to the very government which they had so wantonly proscribed.”<sup>xi</sup>

**LS:** In other words, the English had tried to establish democracy without having the rudiments. [They had] tried to establish democracy without having virtue, and therefore, they failed.

There are quite a few passages here in which Montesquieu uses virtue opposed to avarice, ambition, and so on—<sup>67</sup> in the sense of moral virtue. That goes through the book, especially these first parts. An interpretation is a long story, we must wait for that. Generally speaking, what is the precise connection between democracy and virtue, as Montesquieu sees it? Let us say that democracy means self-government and self-government is not possible without self-restraint and self-restraint is virtue. In the non-democratic governments, the restraint is supplied by the rulers, but in a democracy the restraint must be supplied by the people itself.

At the end of chapter 4, where he speaks of nobility, please read.

**Mr. Reinken:** “Now such a body as this—”

<sup>x</sup> A. S. P. Woodhouse, *Puritanism and Liberty*. Edition unknown.

<sup>xi</sup> *Spirit of Laws*, vol. I, bk. III, ch. 3, 20.

**LS:** Meaning nobles [or the] aristocracy.

**Mr. Reinken:** “Now such a body as this can restrain itself only in two ways; either by a very eminent virtue, which puts the nobility in some measure on a level with the people, and may be the means of forming a great republic—”

**LS:** In other words, which raises the level of the people.

**Mr. Reinken:** “—or by an inferior virtue, which puts them at least upon a level with one another, and upon this their preservation depends.

“Moderation is therefore the very soul of this government; a moderation, I mean, founded on virtue, not that which proceeds from indolence and pusillanimity.”<sup>xii</sup>

**LS:** Yes, this is difficult, regarding what the concept of virtue means here. Well, is virtue of a lower virtue? Do you have anything to say to that, Mr. B.?

**Mr. B:** No.

**LS:** From the sequel it becomes clear that republics are ancient things. There are no republics in modern times, that is the implication. Virtue is public-spiritedness, patriotism, and therefore, self-denial—habitually giving preference to the common good, as distinguished from the private good. The whole meaning of the discussion of virtue cannot become clear before Books IV and V, [so] quite a few questions must remain open. Yes.

**Student:** In chapter 3, page 21, the paragraph beginning, “Athens was possessed of the same number of forces—”<sup>68xiii</sup> Earlier he had spoken of the importance of fixing the number of<sup>69</sup> citizens and implied that this was the praise of Athens over Rome. Then here he says that, despite the fact that she kept the same number of citizens, Athens fell.<sup>70</sup> On the other side,<sup>71</sup> [before] Rome fell,<sup>72</sup> it endured a<sup>73</sup> [greater] period of grandness.

**LS:** Is this not easy to solve?

**Student:** Well, does not that<sup>74</sup> [diminish] the value of fundamental laws?

**LS:** No<sup>75</sup>. The fundamental laws, regarding the composition of the deliberative body and so on, are a necessary condition but not a sufficient condition. The other condition, at least as necessary, is the spirit animating the people.<sup>76</sup> These people may have excellent laws regarding voting and so on,<sup>77</sup> [but] they may be very poor citizens.<sup>78</sup> [Also] they may be corrupt and corruptors. There is no difficulty there.

**Student:** But the way he phrased it here that if she had the same number of forces—

<sup>xii</sup> *Spirit of Laws*, vol. I, bk. III, ch. 3, 23.

<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. III, ch. 3, 21.

**LS:**<sup>79</sup> In order to make clear that it is not the number of Athenians but what kind of people they [were] which [was]<sup>80</sup> responsible for their fall, yes.

Then let us turn to the discussion of monarchy in chapter 5. Perhaps we can read that.

**Mr. Reinken:** “I beg that no one will be offended with what I have been saying; my observations are founded on the unanimous testimony of historians. I am not ignorant that virtuous princes are so very rare; but I venture to affirm, that in a monarchy it is extremely difficult for the people to be virtuous.

“Let us compare what the historians of all ages have asserted concerning the courts of monarchs; let us recollect the conversations and sentiments of people of all countries, in respect to the wretched character of courtiers, and we shall find that these are not airy speculations, but truths confirmed by a sad and melancholy experience.”

**LS:** He simply says about a sad experience but the translator is eager to add his wit. Yes.

**Mr. Reinken:** “Ambition is idleness; meanness mixed with pride; a desire of riches without industry; aversion to truth; flattery, perfidy, violation of engagements, contempt of civil duties, fear of the prince’s virtue, hope from his weakness, but, above all, a perpetual ridicule cast upon virtue, are, I think, the characteristics by which most courtiers in all ages and countries have been constantly distinguished.<sup>xiv</sup> Now, it is exceedingly difficult for the leading men of the nation to be knaves, and the inferior sort to be honest; for the former to be cheats, and the latter to rest satisfied with being only dupes.”<sup>xv</sup>

**LS:** But you see how much he identifies here, again, virtue with moral virtue. Moral virtue is very difficult to obtain and to preserve under monarchy. The argument of Montesquieu against the classics can be stated as follows: if you want virtue, then you must be in favor of republics, and especially of democracies, and not this kind of kingdom which they sometimes have praised.

There is a footnote here regarding virtue<sup>81</sup> [where] he speaks of political virtue.

**Mr. Reinken:** “which is also moral virtue as it is directed to the public good; very little of private moral virtue, and not at all of that virtue which relates to revealed truths.”<sup>xvi</sup>

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<sup>xiv</sup> In original: “Ambition in idleness; meanness mixed with pride; a desire of riches without industry; aversion to truth; flattery, perfidy, violation of engagements, contempt of civil duties, fear of the prince’s virtue, hope from his weakness, but, above all, a perpetual ridicule cast upon virtue, are, I think, the characteristics by which most courtiers in all ages and countries have been constantly distinguished.”

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. III, ch. 5, 24.

<sup>xvi</sup> In original: “I speak here of political virtue, which is also moral virtue as it is directed to the public good; very little of private moral virtue, and not at all of that virtue which relates to revealed truths.” *Spirit of Laws*, vol. I, bk. II, ch. 5, 23.

**LS:**<sup>82</sup> In other words, what he otherwise calls Christian virtue. This is a quite precise statement but we do not yet have the materials to see how precise it is;<sup>83</sup> he refers here to Book V, chapter 2, which we will discuss next time.<sup>84</sup>

What<sup>85</sup> is the principle of monarchy, if it is not virtue?<sup>86</sup> The answer is honor. And honor is here understood as concerned with one's superiority, i.e. a strictly selfish motive. And this is why it is inferior to virtue, equal to public-spiritedness, [and] equal to dedication to the common good. It is inferior to virtue [because] it is akin to ambition. And again Mr. B. has pointed this out: it is a substitute for virtue, a vice really, but which has a public benefit. *The Fable of the Bees*,<sup>xvii</sup> in which this was stated, antedates Montesquieu considerably.

Let us turn to chapter 8 and read the second paragraph.

**Mr. Reinken:** "Besides, as honor has its laws and rules; as it knows not how to submit; as it depends in a great measure on a man's own caprice, and not on that of another person: it can—"

**LS:** Yes, I don't believe it means "men's own caprice," but on the caprice of honor that certain things which are as rationally good as another, they should be good, the *point d'honneur*.

**Mr. Reinken:** "—it can be found only in countries in which the constitution is fixed, and where they are governed by settled laws."<sup>xviii</sup>

**LS:** Yes, this is clear. In other words, there is an essential connection between honor and the nature of monarchies, as distinguished from despotic regimes. But this implies<sup>87</sup> that honor must be respected by the king. The king cannot command<sup>88</sup> a nobleman to do anything dishonorable because he would simply refuse to do that.

Let us read the beginning of chapter 9.

**Mr. Reinken:** "As virtue is necessary in a republic, and in a monarchy honor, so fear is necessary in a despotic government: with regard to virtue, there is no occasion for it, and honor—"

**LS:** No, "it is not necessary there."

**Mr. Reinken:** "—and honor would be extremely dangerous."<sup>xix</sup>

**LS:** "Extremely" is again an addition of Mr. Nugent. Now is this not very interesting? Honor would be dangerous to despotism but virtue would not be dangerous. Why not?

<sup>xvii</sup> Mandeville's *Fable of the Bees* was published in its final form in 1724.

<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. III, ch. 8, 25–26.

<sup>xix</sup> *Spirit of Laws*, vol. I, bk. III, ch. 9, 26.

**Student:** Because virtue is moderation—

**LS:** Self-denial!<sup>89</sup> The despot inflicts all kind of harm on the virtuous man but since the virtuous man is characterized by self-denial, he will not react. Yes.

In [Xenophon's] *Education of Cyrus*, Cyrus explains that his grandfather who is a despot, or who is a tyrant, teaches all of the subjects to be virtuous<sup>90</sup> [and] do without, because he takes it.

But<sup>91</sup> [there] is a closer parallel<sup>92</sup> in Xenophon's *Hiero*. The virtuous man is not feared by the tyrant because he might do anything against him, but because the other people might wish the virtuous man to be the ruler.

In the paragraph after the next in the same chapter.

**Mr. Reinken:** "A moderate government may, whenever it pleases, and without the least danger, relax its springs. It supports itself by the laws, and by its own internal strength. But when a despotic prince ceases for one single moment to uplift his arm, when he cannot instantly demolish those whom he has intrusted with the first employments, all is over: for as fear, the spring of this government, no longer subsists, the people are left without a protector."<sup>xx</sup>

**LS:** Is this not very interesting? The statement about the despot<sup>93</sup> who is lazy, ignorant, and voluptuous, [but] here we see something very different—he must be very active.<sup>94</sup> Because otherwise the people doesn't have a protector. The function of the despotic government, a monarchy, is to protect the people.<sup>95</sup> He doesn't do it from virtue, but without it he could not maintain his government.

And therefore the question might very well arise—and we have many experiences of that in our 19th century—if the despot is the protector of the people, i.e. of the mass of the people, may not despotism be preferable to monarchy? In a monarchy, as we have seen before, the only body in which the people have confidence, at least in France, is the Parliament, and the Parliament became weaker and weaker and was very insufficient protection against king and nobility.

A little further on, "The people must be judged by the laws ..."

**Mr. Reinken:** "—and the great men by the caprice of the prince."

**LS:** In other words, we have laws in despotism. If someone has a controversy with his neighbor, that is settled by law even in despotic government.

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<sup>xx</sup> *Spirit of Laws*, vol. I, bk. III, ch. 9, 26.

**Mr. Reinken:** “—that the lives of the lowest subject should be safe, and the pasha’s head ever in danger.”<sup>xxi</sup>

**LS:** That’s it! In a monarchy the pashas are very safe because of the principle of noblemen.

Now the beginning of the next paragraph.

**Mr. Reinken:** “History informs us that the horrid cruelties of Domitian struck such a terror into the governors, that the people recovered themselves a little during his reign.”<sup>xxii</sup>

**LS:** So you see how you have to read Montesquieu:<sup>96</sup> The fact that he says something on one page and you quote it doesn’t settle the issue at all. You must also see what he says further on. He begins with a kind of very simplistic distinction and he modifies it while he goes.

Let us first read the fourth paragraph in chapter 10.

**Mr. Reinken:** “Little does it then avail to plead the sentiments of nature, filial respect, conjugal or parental tenderness, the laws of honor, or want of health; the order is given, and that is sufficient.”

**LS:** Now let us turn to the paragraph after the next.

**Mr. Reinken:** “One thing, however, may be sometimes opposed to the prince’s will, namely, religion. They will abandon, nay they will slay a parent, if the prince so commands; but he cannot oblige them to drink wine. The laws of religion are of superior nature, because they bind the sovereign as well as the subject. But with respect to the law of nature, it is otherwise; the prince is no longer supposed to be a man.”<sup>xxiii</sup>

**LS:** This is his sole reference to natural right in these chapters. Here you see there is one power in despotism—as Montesquieu sees despotism—which is greater than the power of the despot, and that is religion. But what does religion mean here?

**Student:** Fear.

**LS:** Right, and therefore is it not true that the principle must animate the ruler as well as the ruled?<sup>97</sup> This is to say nothing of the fact that the despot is likely to have great fear of what some of his subjects might do to him.

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<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. III, ch. 9, 27.

<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. III, ch. 9, 27.

<sup>xxiii</sup> *Spirit of Laws*, vol. I, bk. III, ch. 10, 28.

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<sup>1</sup> Deleted “. . . a model to follow by the others and I hope you will hear quite a few papers of the same excellence. Now that it was such a good paper was due not only to the thoroughness with which you read the books in question but also that you have unusually good grasp of Aristotle.”

<sup>2</sup> Deleted “this.”

<sup>3</sup> Deleted “Now I would have to give a summary of your paper to be fair to your achievement and this would not be practical. So let us turn immediately, because we have a lot of material. You have made quite a lot of observations which I have not made so if we come to these passages and I do not bring them out you might remind me of them. But I should also say something to Mr. W. I reconsidered your observation regarding the fifth paragraph of the preface and there is no question that you were right. And there is this difficulty which we discussed last time.”

<sup>4</sup> Deleted “at the beginning, namely.”

<sup>5</sup> Deleted “has.”

<sup>6</sup> Deleted “of course.”

<sup>7</sup> Deleted “the kinds of questions which.”

<sup>8</sup> Deleted “the way in which he answers them is a different story.”

<sup>9</sup> Deleted “of course, is.”

<sup>10</sup> Deleted “The question is.”

<sup>11</sup> Deleted “at any.”

<sup>12</sup> Deleted “this.”

<sup>13</sup> Deleted “the first. . .”

<sup>14</sup> Deleted “Not the end. Good.”

<sup>15</sup> Deleted “we can say.”

<sup>16</sup> Deleted “of course.”

<sup>17</sup> Deleted “and.”

<sup>18</sup> Deleted “And.”

<sup>19</sup> Deleted “and that has.”

<sup>20</sup> Deleted “Good.”

<sup>21</sup> Deleted “the will of the sovereign? Well.”

<sup>22</sup> Deleted “Well.”

<sup>23</sup> Deleted “Well.”

<sup>24</sup> Deleted “Well.”

<sup>25</sup> Deleted “of.”

<sup>26</sup> Deleted “whatever is required for all of these three regimes, no.”

<sup>27</sup> Deleted “of course.”

<sup>28</sup> Deleted “also or instead go back, not to the.”

<sup>29</sup> Deleted “to.”

<sup>30</sup> Deleted “is that.”

<sup>31</sup> Changed from “these intermediary, these subordinate powers.”

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- <sup>32</sup> Deleted "as we see here and."
- <sup>33</sup> Deleted "was, since the civil war."
- <sup>34</sup> Deleted "of course."
- <sup>35</sup> Deleted "Well."
- <sup>36</sup> Deleted "I mean."
- <sup>37</sup> Deleted "of course."
- <sup>38</sup> Deleted "of course."
- <sup>39</sup> Deleted "Well."
- <sup>40</sup> Deleted "Now."
- <sup>41</sup> Deleted "well."
- <sup>42</sup> Deleted "I mean."
- <sup>43</sup> Deleted "then."
- <sup>44</sup> Deleted "of course."
- <sup>45</sup> Deleted "of book five, no of chapter."
- <sup>46</sup> Deleted "yes."
- <sup>47</sup> Deleted "Now."
- <sup>48</sup> Deleted "say."
- <sup>49</sup> Deleted "of course."
- <sup>50</sup> Deleted "you know."
- <sup>51</sup> Deleted "this is."
- <sup>52</sup> Deleted "Still."
- <sup>53</sup> Deleted "no."
- <sup>54</sup> Deleted "But it has gone through Machiavelli, and this will become clearer as we go along."
- <sup>55</sup> Deleted "Now this."
- <sup>56</sup> Deleted "can."
- <sup>57</sup> Deleted "resort."
- <sup>58</sup> Deleted "Yes, now."
- <sup>59</sup> Deleted "You see."
- <sup>60</sup> Deleted "Now."
- <sup>61</sup> Deleted "of course."
- <sup>62</sup> Deleted "also."
- <sup>63</sup> Deleted "of course."
- <sup>64</sup> Deleted "That is a question."
- <sup>65</sup> Deleted "of course."
- <sup>66</sup> Deleted "saying, for."
- <sup>67</sup> Deleted "quite."



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<sup>68</sup> Deleted "LS: Yes.

Student: Now."

<sup>69</sup> Deleted "your."

<sup>70</sup> Deleted "And also."

<sup>71</sup> Deleted "the fact that."

<sup>72</sup> Deleted "but."

<sup>73</sup> Deleted "great."

<sup>74</sup> Deleted "cast down on."

<sup>75</sup> Deleted "no."

<sup>76</sup> Deleted "So."

<sup>77</sup> Deleted "and so on and."

<sup>78</sup> Deleted "And then, of course."

<sup>79</sup> Deleted "Well."

<sup>80</sup> Changed from "they are which were."

<sup>81</sup> Deleted "and."

<sup>82</sup> Deleted "So."

<sup>83</sup> Deleted "and."

<sup>84</sup> Deleted "Now."

<sup>85</sup> Deleted "then."

<sup>86</sup> Deleted "And."

<sup>87</sup> Deleted "of course."

<sup>88</sup> Deleted "a gentleman."

<sup>89</sup> Deleted "I mean."

<sup>90</sup> Deleted "to."

<sup>91</sup> Deleted "here."

<sup>92</sup> Deleted "it occurs to me."

<sup>93</sup> Deleted "you know, this fellow."

<sup>94</sup> Deleted "And why must he be very active?"

<sup>95</sup> Deleted "Of course."

<sup>96</sup> Deleted "I mean."

<sup>97</sup> Deleted "Well."

**Session 4: January 13, 1966**

**Leo Strauss:** I think we will begin right at the beginning of Book IV<sup>1</sup>. The subject of Book III had been the principles of the various kinds of government. And the “principle” is Montesquieu’s substitute for what in classical political philosophy was [called] the “end.” This difference is<sup>2</sup> crucial: whether the end is replaced by the principle in Montesquieu’s sense. Yes.

**Student:** You had raised the question in the past about Montesquieu’s norms and I wonder if you have settled it. I was thinking of the very last chapter of Book III where he makes it explicit that he is talking about “oughts.” Had you settled that question?

**LS:** Well, let us read this last chapter. “These are the principles of the three sorts of governments; which does not mean that in a particular republic the people actually are virtuous, but that they ought to be, virtuous; also doesn’t prove that in a certain monarchy one has honor, and that in a given despotic state one has fear; but that one ought to have it, for without it the government would be imperfect.”<sup>i</sup> Now we discussed this last time, I think.

**Student:** Is this the answer?

**LS:** No, that is not sufficient.<sup>3</sup> Let me restate it. There must be government otherwise men couldn’t live. And if they have government they can have only one of the three possible governments. Therefore, whichever they choose, they must do whatever this particular government requires. But it doesn’t tell you anything, yet, which of the three is preferable to the other.

**Student:** But within that context, that is the norm.

**LS:** Yes<sup>4</sup>. You have these three conditional norms, but you must pick one of them. What would the present-day social science relativist say to this argument? Yes.

**Student:** He would say, you must pick one and it doesn’t make much difference which one you pick; and once picked, you set about maximizing that choice.

**LS:** Must you pick one? He would question that because that would already be too much of a concession on his part.

**Student:** Well, wouldn’t he say that it is irrelevant which one you pick?

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. III, ch. 11, 28.

**LS:** No, because then everything follows. If you have to pick one of the three, then you have to accept the oughts implied in whichever of the three you choose. But what is the condition [or premise] of the whole argument<sup>5</sup> which he would question?

**Student:** That there are only these three possible types of governments.

**LS:** No, well, that is negotiable.

**Student:** That you need government.

**LS:** Yes, and on what is this based? That you need government?

**Student:** The notion of an end.

**LS:** More directly, more simply.

**Student:** Human nature.

**LS:** That is, again, not simple enough.

**Student:** Food, sex, sociability.

**LS:** Yes, sure, but at the bottom of all that?

**Student:** That you should be other than savages.

**LS:** No, no, why should you not be savages? No, it is much more simple!

**Student:** Self-preservation?

**LS:** Yes, but more simply!<sup>6</sup> The whole argument presupposes that we should live. Why should we live? Why could we not make the death-wish our primary motivation, [and] then we don't need any governments. Now, honestly, don't laugh about it! The strict relativism now prevailing is based on the principle that there is absolutely no desire which can be called natural,<sup>7</sup> [and serve as] a preference to other desires. And therefore the whole case is wide open, not even this commonsensical proposition that men cling to life, the desire to live, and therefore governments and so on. That is the point. There is no inclination or desire whatever which is preferable in itself, and therefore, the whole argument of Montesquieu breaks down.<sup>8</sup>

But to come back to Montesquieu, and to discuss the subject in a more qualified and more sensible way: Montesquieu replaces the end by the principle. But this does not affect the whole issue, as you see from the sequel. Book IV deals with education. Education is a subject following principle, just as it was the subject following the end in Plato or Aristotle—that remains unchanged. If<sup>9</sup> [you] look at Book VIII of Aristotle's *Politics* and especially<sup>10</sup> at Plato's *Republic*, you see how crucial the question of

education was. Needless to say, the content [and character] of the education<sup>11</sup> will be greatly changed when you go from Plato and Aristotle to Montesquieu<sup>12</sup>—even Montesquieu's republic or democracy which comes closer to Plato and Aristotle than his despotism or monarchy.<sup>13</sup>

As to the normative character, the heading: "That The Laws of Education Ought to Be Relative to the Principles of Government," means that if you want to have<sup>14</sup> a democracy, then you must have laws of education conducive to democracy. But, you are not compelled to choose democracy. You are able to choose one of the three.

<sup>15</sup>[At] the end of chapter 1 he enumerates the three ends of the three kinds of government, putting republics with virtue into the center, and the build-up of the book<sup>16</sup> [proceeds] accordingly. He speaks first of monarchy and then of republics and then of despotism.

This second chapter is a very beautiful chapter: straight from the horse's mouth on the spirit of the old French monarchy. And I don't think you will find a superior statement; there may be equal statements. Will you read the second paragraph?

**Mr. Reinken:** "It is here that we constantly hear three things, viz., that we should have a certain nobleness in our virtues, a certain frankness in our morals, and a certain politeness in our manners."

**LS:** Yes, that is very beautifully stated.

**Mr. Reinken:** "The virtues we are taught here are less what we owe to others than to ourselves; they are not so much what draws us towards society, as what distinguishes us from our fellow-citizens."

**LS:** The difference, in other words, between monarchy and republic is that the morality of republics is,<sup>17</sup> one could say, altruistic, and that of monarchies is selfish, self-centered, [and] what one owes to oneself. And it is<sup>18</sup> entirely [in]egalitarian. Read the next paragraph.

**Mr. Reinken:** "Here the actions of men are judged, not as virtuous—"

**LS:** "Good."

**Mr. Reinken:** "—not as good, but as shining—"

**LS:** "Beautiful."

**Mr. Reinken:** "—but as beautiful; not as just, but as great; not as reasonable, but as extraordinary."

**LS:** This [again] throws<sup>19</sup> light on what he understands by virtue because what he excludes is aristocratic virtue. Virtue [is] equal to goodness, justice, reasonableness.<sup>20</sup> In

other words, virtue is moral virtue, whatever his disclaimer may mean. Virtue is what one owes to others, in contradistinction to this aristocratic virtue. Go on please.

**Mr. Reinken:** “When honor here meets with anything noble in our actions, it is either a judge that approves them, or a sophist by whom they are excused.”

**Different Student:** Excuse me, what does that “it” refer to?

**LS:** Honor.

**Mr. Reinken:** “It, honor, allows of gallantry when united with the idea of sensible affection, or with that of conquest; this is the reason why we never meet with so strict a purity of morals in monarchies as in republican governments.”<sup>ii</sup>

**LS:** In other words, the later point: Nothing is—what is that?

**Student:** All’s fair in love and war.

**LS:** Yes,<sup>21</sup> good.

**Mr. Reinken:** “It allows of cunning and craft, when joined with the notion of greatness of soul or importance of affairs; as, for instance, in politics, with finesses of which it is far from being offended.

“It does not forbid adulation, save when separated from the idea of a large fortune, and connected only, with the sense of our mean condition.”<sup>iii</sup>

**LS:** The main point is that monarchy rests on a lower moral level than republics<sup>22</sup>—the purity of manners is absent.

In this section he speaks about the character of the virtues:<sup>23</sup> one should put into the virtues a certain noblesse<sup>24</sup>. Then, in the next two paragraphs, he speaks of the morals, and then, finally, about the manners. We can, perhaps, read that.

**Mr. Reinken:** “In fine, the education of monarchies requires a certain politeness of manners. Man, a sociable animal, is formed to please in society—”

**LS:** No, well the difference in translation is not too important. “Man, born for living together . . .”

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<sup>ii</sup> In original: “It allows of gallantry when united with the idea of sensible affection, or with that of conquest; this is the reason why we never meet with so strict a purity of morals in monarchies as in republican governments.”

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 2, 30.

**Mr. Reinken:** “Man, born for living together, is formed to please in society; and a person that would break through the rules of decency, so as to shock those he conversed with, would lose the public esteem, and become incapable of doing any good.

“But politeness, generally speaking, does not derive its origin from so pure a source. It arises from a desire of distinguishing ourselves. It is pride that renders us polite; we are flattered with being taken notice of for manners that shows we are not of a mean condition, and that we have not been bred with those who in all ages are considered the scum of the people.”<sup>iv</sup>

**LS:** “And that we have not lived with that sort of people whom one has abandoned in all ages.” Some people believe that this is Montesquieu’s own view, this contempt for the mass of men who are<sup>25</sup> poor and were at all times poor. But he<sup>26</sup> [is] expressing the view of the nobility. He makes clear also that the morality of nobility, of monarchy, is that of the courtiers:<sup>27</sup> [they] constituted this whole society, by the fact that there is a court and the king is the fountain of honor. He develops this in a remarkable way. We can read a very illuminating paragraph later, toward the end.

**Mr. Reinken:** “There is nothing that honor more strongly recommends to the nobility than to serve their prince in a military capacity. And, indeed, this is their favorite profession because, its dangers, its success, and even its miscarriages are the road to greatness. Yet this very law of its own making honor chooses to explain: and in case of any affront, it requires or permits us to retire.”<sup>v</sup>

**LS:** The nobility is a . . . nobility; one can say that the nobility of which Montesquieu thinks is, in the first place, a French nobility, a feudal nobility, which, of course, had been greatly modified by the eighteenth century. But Montesquieu is not at present concerned with that feudal origin, of which he is fully aware, because he wants now just to describe monarchy at its best, regardless of what its origin is. And why he does this can only appear with the development of the argument.

**Student:** In the paragraph immediately after the one which described that, the English edition says: “Politeness, in monarchies, is naturalized at court.”<sup>vi</sup> <sup>28</sup> [What does he mean by] the word “naturalized”?

**LS:** Yes, that is a good question. What does naturalized here mean?<sup>29</sup> In the ordinary meaning<sup>30</sup>, its primary place would not be at court; just as a naturalized citizen is not a citizen born in the country.

**Student:** He’s not implying that things considered naturalized as a knave?

**LS:** No,<sup>31</sup> could it not mean—I simply do not know enough of French and especially of eighteenth century French—that politeness has its natural place at the court?<sup>32</sup>

<sup>iv</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 2, 30.

<sup>v</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 2, 32.

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 2, 30.

Now this is a key point. A general, or any officer, may retire and is not compelled to stay with the army if his honor forbids him to stay, which<sup>33</sup> would be unthinkable in a despotism; but it would also be unthinkable in a republic.

**Student:**<sup>34</sup> American officers can resign their commissions.

**LS:** But is the American democracy a democracy in Montesquieu's sense? That is a great question.<sup>35</sup> This kind of democracy didn't exist in Montesquieu's time and the only prefiguration of it, of which he was aware, is the English monarchy or republic.<sup>36</sup>

Read a bit later, the second paragraph where we left off.

**Mr. Reinken:** "Honor, therefore, has its supreme laws, to which education is obliged to conform. The chief of these are, that we are permitted to set a value upon our fortune, but are absolutely forbidden to set any upon our lives."<sup>vii</sup>

**LS:** Isn't that a beautiful formulation? That is the spirit of the old nobility.

**Student:** The footnote there makes the same point about the "ought."

**LS:** Let us read the footnote.

**Mr. Reinken:** "We mention here what actually is, and not what ought to be; honor is a prejudice, which religion sometimes endeavors try remove, and at other times to regulate."<sup>viii</sup>

**LS:** That seems to be the reverse of what he said before in Book III!<sup>37</sup> Given the fact that society can have a certain "ought," and that is an "if" statement. Society X has the ought Y. But you can<sup>38</sup> question that ought, and then you say, "this ought is a false ought." That is exactly what he is doing, it is only a bit more complicated but there is no difficulty.

**Student:** I think that that footnote is somewhat sarcastic because if religion did succeed in curtailing this honor, the result, on Montesquieu's principles, would probably be a despotism; because this noble class would no longer take an interest in governmental affairs.

**LS:** Yes, that is a difficulty. No, but on the other hand, he does not identify himself with the morality of honor.

**Student:** Yes, but if one were to do away with it . . .

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<sup>vii</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 2, 32.

<sup>viii</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 2, 32.

**LS:** No, what he would do if confronted with a choice between the principle of honor and the principle of religion—that is another matter; but that he does not identify himself with the morality of honor, I think, one can say.

**Student:** On the generals retiring, this paragraph that we just read says that these things prevent us from putting any value on our lives. Wouldn't the general retiring be setting a value upon his life?

**LS:** No, he would do it for reasons of honor; because the king, perhaps, did not greet him properly for some reason. No, that is clear.

Now the next chapter deals with education in despotisms. Let us read the first paragraph.

**Mr. Reinken:** “As education in monarchies tends to raise and ennoble the mind, in despotic governments its only aim is to debase it. Here it must necessarily be servile; even in power such an education will be an advantage, because every tyrant is at the same time a slave.”

**LS:**<sup>39</sup> Here we have a final proof, if one is needed, that when Montesquieu says X is a principle of a government, he means that it is a principle animating both the ruler and the ruled. The paragraph after the next.

**Mr. Reinken:** “In despotic states, each house is a separate government. As education, therefore, consists chiefly in social converse, it must be here very much limited; all it does is to strike the heart with fear, and to imprint on the understanding a very simple notion of a few principles of religion. Learning here proves dangerous, emulation fatal; and as to virtue, Aristotle cannot think that there is any one virtue belonging to slaves; if so, education in despotic countries is confined within a very narrow compass.”<sup>ix</sup>

**LS:** In other words, [there is] no trace of virtue in despotic governments but [there are] some rudiments of religion.

He turns now to republican government which is the highest, as everything implies. Let us look at the heading of chapter 4.

**Mr. Reinken:** “Difference between the Effects of Ancient and Modern Education.”

**LS:** Why does he make this change from the general consideration of the regime to the historical consideration of ancients and moderns?

**Student:** May I ask a question about the last chapter? The last paragraph of chapter 3 seems to raise the question, again, of whether virtue is dangerous in a despotism. And the conclusion there seems to be that it is.

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 3, 32–33.



**LS:** It is a conclusion and not explicitly said? Which word is decisive here? He speaks of the good citizen who loves the state. But that would mean that we have not yet solved the question of the precise relation between virtue and political virtue. Shall we leave it at that? And when he spoke of the other passage, where he said virtue would be useless, he means perhaps the other virtues and not simply political virtue. We must wait, we have not yet the material together.

Now here he speaks suddenly of the ancients and the moderns. The implication is clear: the republican governments are ancient and the monarchic and despotic are modern. We found [this] already [in] an earlier chapter, [which] I believe<sup>40</sup> we haven't read in class: Book III, chapter 3.

**Mr. Reinken:** "The Greek statesmen, who lived under a popular government, knew no other support than virtue. The modern inhabitants—"

**LS:** No,<sup>41</sup> "the modern politicians."

**Mr. Reinken:** "The modern politicians of that country—"

**LS:** No, of any country. Oh God, he didn't think of the Greek politicians of 1748, of which he knew nothing! "The politicians of today . . ."

**Mr. Reinken:** "—are entirely taken up with manufacture, commerce, finances, opulence, and luxury."<sup>x</sup>

**LS:** Now that is a very remarkable thought taken over by Rousseau. That is the point: virtue, tradition, classical, Greek [versus] economics, modern. And that is a very profound statement which one must<sup>42</sup> properly interpret.

Now this subject which he takes up here, in chapter 4 of Book IV, is an interesting facet of the quarrel between the ancients and the moderns. In the popular notion this quarrel is a quarrel between the French theatre under Louis XIV and the classical Greek theater, tragedy and comedy. But this is only a small part of that quarrel. The most important part of that quarrel<sup>43</sup> is that between Newton's physics and Aristotle's physics. But here we have another one, the quarrel between<sup>44</sup> modern political morality and classical political morality.

This quarrel is crucial for Montesquieu. There are people, and Montesquieu sometimes gives the impression that he belongs to them, who believe that this quarrel has been decided by history; meaning that the ancient possibilities, say, of the republic, have been doomed by the fact that they are no longer possible. But this<sup>45</sup> would not settle the issue at all.<sup>46</sup> [Their] claim<sup>47</sup> would not be refuted by that. Is this clear<sup>48</sup>? It is not clear to you. State your objection.

**Student:** What did you say about it no longer being possible?

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<sup>x</sup> *Spirit of Laws*, vol. I, bk. III, ch. 3, 21.

**LS:** It is no longer feasible to have small republics. Does this dispose of the issue of the small republics altogether? Practically, yes; but not in principle, because the fact that they are impossible could simply be a proof of the decay of modern man, of an irreparable decay. And for Montesquieu<sup>49</sup> this is an open issue and you must discuss it.

Now in his analysis of modernity, which he undertakes throughout the work, we have to distinguish three elements, one of which, at least, has become perfectly clear. What are the differences between the ancients and the moderns. There are three chief points: first, Christianity-paganism; second, modernity stems from feudalism, the Teutonic origin of the modern world,<sup>50</sup> [and] the forests of Germany, that is a point he will make later; and the third, and not the least significant, is that between modern science, let us say Newtonian science and its immense implications, versus pre-modern science, or [the] pre-modern understanding of nature.

Let us read the second paragraph of chapter 4.

**Mr. Reinken:** “Another advantage their education possessed over ours—”

**LS:** “Their,” meaning the ancients.

**Mr. Reinken:** “—was that it never could be effaced by contrary impressions.”

**LS:** No, it was never denied.<sup>51</sup> [For example] a minister makes a statement and then the next day the prime minister says it is not true.

**Mr. Reinken:** “Epaminondas, the last year of his life, said, heard, beheld, and performed the very same things as at the age in which he received the first principles of his education.”<sup>xi</sup>

**LS:** Yes, what can this mean? After all, as an old-ish man he cannot possibly have done the same thing as a boy in every respect. What does he mean?

**Student:** Is it a cyclical theory of history?

**LS:** Oh no, such highfalutin things are not known. What he refers to is the death-bed repentance. The people stood by the principles of their life. That is, I think, what he means.

**Mr. Reinken:** “In our days we receive three different or contrary educations, namely, of our parents, of our masters, and of the world. What we learn in the latter effaces all the ideas of the former. This, in some measure, arises from the contrast we experience between our religious and worldly engagements, a thing unknown to the ancients.”<sup>xii</sup>

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<sup>xi</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 4, 33.

<sup>xii</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 4, 33.

**LS:** He speaks as clearly as he possibly could. The quarrel concerns primarily the status<sup>52</sup> [and] character of that religion in the two ages.

Now the education in republican government, second paragraph.

**Mr. Reinken:** “One may define this virtue as the love of the laws and of our country. As such love requires a constant preference of public to private interest, it is the source of all private virtues; for they are nothing more than this very preference itself.”<sup>xiii</sup>

**LS:** “For all particular virtues”—that is not quite the same as private.<sup>53</sup> Does this remind you of something which you have heard prior to Montesquieu? First, virtue is self-denial [and] concern with what one owes to others; what you do out of concern for yourself, that does not belong to virtue according to this view. What one owes to others, and therefore, in particular, what one owes to the whole community. And this is the route of all particular virtues, for example, courage.<sup>54</sup> But<sup>55</sup> there can be courage which is not true courage, but only a certain natural temperament. But courage as a virtue would only be a particular form of this self-denial<sup>56</sup> [and] dedication to the common good. What he means by virtue<sup>57</sup> is what Aristotle called general justice, meaning that justice which embraces all other virtues. [See his] *Ethics*, Book V.

Mr. S. referred to magnanimity when he spoke of the morality of monarchies [and] monarchs. Montesquieu doesn’t leave a place for magnanimity in his description of republican morality. Very simply, in Aristotle’s *Ethics* there are two peaks. One is justice, general justice which means the whole social conduct. And the other is magnanimity,<sup>58</sup> the peak of the virtues as understood as self-improvement. The magnanimous man is a man who demands high honors while deserving them. Now magnanimity<sup>59</sup> reduced considerably, as it were, becomes<sup>60</sup> honor in Montesquieu’s sense. And [general] justice, also modified,<sup>61</sup> becomes the virtue of republics, in a sense.

**Mr. Reinken:** “This love is peculiar to democracies.”

**LS:** Yes, “especially” to democracies. Let us keep this in mind.

**Mr. Reinken:** “In these alone the government is intrusted to private citizens. Now, a government is like every thing else: to preserve it we must love it.

“Has it ever been known that kings were not fond of monarchy, or that despotic princes hated arbitrary power?”<sup>xiv</sup>

**LS:** The implication of this was clearly seen by Mr. S. Can you restate it? Why do kings love monarchy? Why do despots love despotism? According to Montesquieu’s suggestion.

**Mr. S:** It is in their own interest to love them.

<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 5, 34.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 5, 34.

**LS:** Exactly, that is what you said. But the implication is clear. The same is true of republics. The citizens of a democracy love democracy ultimately because it is to their interest. And, therefore, the formula which we had before, self-denial as complete disregard of what is in one's own interest, is insufficient and must be revised later on.

**Student:** These seem to me contradictory: on the one hand self-denial and virtue and on the other hand self-interest.

**LS:** In the case of monarchy that is never contested<sup>62</sup>: the honor has a selfish basis, [and] there is no difficulty<sup>63</sup>. The difficulty arises only if it should prove to be true that the order that is based on self-denial, i.e. democracy especially, should also ultimately have a selfish root. We have here only a suggestion, [and] we are not prepared to qualify that.

Now in the next chapter, which has a strange title: "Of some Institutions of the Greeks," he asserts very strangely that Plato's *Republic* belongs to the context of popular government. I believe no one would say that, but, since Montesquieu was as intelligent as any one of us will ever be, we may have to be a little patient and wait to see what precisely he means.

In the next paragraph he speaks of Lycurgus. The transition is easy because there is some connection between Plato's *Republic* and Sparta. He makes quite clear here<sup>64</sup> the difference between republican virtue, political virtue, and moral virtue<sup>65</sup>. Lycurgus concerned [himself] with political virtue; for example, [he] mixed up larceny with the spirit of justice. A moral legislator would never have done that. And he took away even a sense of shame from chastity when he refers to the education of girls in Sparta. Then he makes a still stranger transition—don't forget the heading of this chapter—[to] the institutions of the Greeks<sup>66</sup>. He suddenly comes to speak of two such un-Greek men as William Penn on the one hand and the Jesuits in Paraguay on the other. What does he say about Penn?

**Mr. Reinken:** "A very honest legislator has formed a people to whom probity seems as natural as bravery to the Spartans."

**LS:** So, in other words, Penn, not the Spartans, was concerned with probity. You remember, the first definition of virtue was probity. Penn was concerned with moral virtue, not Lycurgus.

And then in the sequel he speaks of the Jesuits, what did they try to do? Let us read that.

**Mr. Reinken:** "Another example we have from Paraguay. This has been the subject of an invidious charge against a society—"

**LS:** He means the Jesuits.

**Mr. Reinken:** “—that considers the pleasure of commanding as the only happiness in life: but it will be ever a glorious undertaking to render a government subservient to human happiness.

“It is glorious indeed for this society to have been the first in pointing out to those countries the idea of religion joined with that of humanity. By repairing the devastations of the Spaniards, she has begun to heal one of the most dangerous wounds that the human species ever received.”

**LS:** What is democratic there? Let us read the next paragraph.

**Mr. Reinken:** “An exquisite sensibility to whatever she distinguishes by the name of honor, joined to her zeal for a religion which is far more humbling in respect to those who receive than to those who preach its doctrines, has set her upon vast undertakings which she has accomplished with success. She has drawn wild people from their woods, secured them a maintenance, and clothed their nakedness; and had she only by this step improved the industry of mankind, it would have been sufficient to eternize her fame.”

**LS:** Now let us read the footnote.

**Mr. Reinken:** “The Indians of Paraguay do not depend on any particular lord; they pay only a fifth of the taxes, and are allowed the use of firearms to defend themselves.”<sup>xv</sup>

**LS:** Yes, that is his note and it makes it very clear what he means. They do not depend on any particular lord, what can this mean? They depend only on the general lord. Who is the general lord? God! I.e. the Jesuits do not rule in their own right, they rule in the name of God. And this is connected with the fact that the subjects are armed; because the rulers in such a society would not fight. But what has all this to do with democracy? As I said, in the case of Penn that makes sense to say that is a kind of popular government which he established in Pennsylvania. But what about the Jesuits? Well, the concern with the happiness of the people. This will become clearer while we go. Let us read the next paragraph.

**Mr. Reinken:** “They who shall attempt hereafter to introduce like institutions must establish the community of goods as prescribed in Plato’s republic; that high respect he required for the gods; that separation from strangers, for the preservation of morals; and an extensive commerce carried on by the community, and not by private citizens: they must give our arts without our luxury, and our wants without our desires.”<sup>xvi</sup>

**LS:** Yes, this is all in the context of<sup>67</sup> popular government, and Plato’s republic is very strangely said to be the peak<sup>68</sup> [and] model for popular government. That is surely a hard nut to crack, but I believe that it is not impossible to crack because there is an ambiguity in popular government. What does popular government mean, according to Montesquieu? There are two different things.

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 6, 36.

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 6, 36.

**Student:** Well, he only speaks of the community of goods.

**LS:** Yes, but this goes back: “Those who would wish to make similar institutions,” meaning the Jesuits and Penn haven’t gone far enough; Plato has gone to the end of the road.

**Student:** Is he referring to popular government as being government of classes as he had mentioned in the earlier book, where he had said the first class is—

**LS:**<sup>69</sup> What does popular government mean first?<sup>70</sup>

**Student:** It first seems to be rule by all the individuals—

**LS:** Yes, by the majority.

**Student:** But then he stresses this business of the love of the country and the laws.

**LS:** No, more simple. [A] republic is, let us say, the government of all or the majority and its principle is virtue.<sup>71</sup> From the first point of view, from the rule of all, Plato’s republic is<sup>72</sup> a very poor specimen. But when you look at the other point, namely virtue, does it not make sense to say that Plato’s republic is *the* model for all those who wish to have a community dedicated to virtue?

These two things, the nature of the government, in Montesquieu’s language, and the principle, can diverge. And it is no accident here that he introduces Penn and the Jesuits<sup>73</sup>—Christian legislators—because virtue can be said to be the Christian principle as easily as that of Plato. And, I will say this to facilitate your understanding of Montesquieu, he states the case for the virtuous regime, Platonic or Christian, in order to prepare a criticism of it.

Very roughly speaking [goes to the board] here you have the regimes of virtue,

E	
x	
V	H
x	x

which means primarily the Greek democracies, the Greek republics, and here you have monarchy. Now there is no question that if the issue is posed in this form, Montesquieu would say this is higher, although practically I must prefer monarchy because France cannot possibly be transformed into a republic or into a federation of republics. But<sup>74</sup> still, this is a somewhat difficult [and more complicated] situation,<sup>75</sup> and Montesquieu is looking for an alternative which would avoid the inconveniences of both democracy, with this emphasis on virtue, and monarchy, with its feudalism, and [would] be superior to both.

And this is something here which is also called x and I add the letter E, meaning England. This is roughly the way in which the argument works. England then is surely no longer a democratic republic, a small state where each man is fully dedicated to the common good, and on the other hand, it is surely no longer feudal in any way,<sup>76</sup> as we have already learned from Montesquieu. The English have abolished the last relics of the lords' judicial power and so on.

There is, by the way, another way in which one can understand why Montesquieu speaks here of the Christian legislators,<sup>77</sup> [but] not of Plato, in the context of democracy. And that is the notion that, according to the biblical view, all men are equal before God;<sup>78</sup> this equality is<sup>79</sup> of importance as we will see later.

Now here in chapter 7 he gives the simple reason why this ancient institution is no longer possible: they<sup>80</sup> have [a] place only in small states and there is no possibility of small states in Europe, except [for] such [places] like Switzerland, etc.,<sup>81</sup> [but not in places like] Germany, Italy, and so on<sup>82</sup>.

In chapter 8, near the end of the second paragraph, when he says, “only by the corruption—”

**Mr. Reinken:** “It was only by the corruption of some democracies that artisans became freemen.”<sup>xvii</sup>

**LS:**<sup>83</sup> His notion of democracy is not our notion, nor is it the Greek notion. For Aristotle,<sup>84</sup> [it] goes without saying that artisans can be full citizens in a democracy.<sup>85</sup>

At the end of chapter 8,<sup>86</sup> he had spoken of the fact that the ancients used music in order to mellow the harshness of a warrior education<sup>87</sup>. [Read the last paragraph].

**Mr. Reinken:** “But some will ask, why should music be pitched upon as preferable to any other entertainment? It is because of all sensible pleasures there is none that less corrupts the soul. We blush to read in Plutarch that the Thebans, in order to soften the manners of their youth, authorized by law a passion which ought to be proscribed by all nations.”<sup>xviii</sup>

**LS:**<sup>88</sup> Today no one would say, at least, that he blushes about the mention of such a thing; he means, of course, homosexual relations.

Now let us turn to Book V. The heading is vague, as you see: “The Laws that the Legislator Gives Ought to be Relative to the Principle of Government.” In a way, this is true of all laws; therefore, he has this special chapter 1, “Idea of this Book.”

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<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 8, 38.

<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 8, 39.

**Mr. Reinken:** “That the laws of education should relate to the principle of each government has been shown in the preceding book. Now the same may be said of those which the legislator gives to the whole society.”<sup>xix</sup>

**LS:** This is a somewhat less vague description of the subject of this book. Now let us read the first paragraph of chapter 2.

**Mr. Reinken:** “Virtue in a republic is a most simple thing; it is a love of the republic; it is a sensation—”

**LS:** A “sentiment.”

**Mr. Reinken:** “—a sentiment, and not a consequence of acquired knowledge—”

**LS:** “Not a sequel of knowledges.”

**Mr. Reinken:** “—a sentiment that may be felt by the meanest as well as by the highest person in the state. When the common people adopt good maxims, they adhere to them more steadily than those whom we call gentlemen.”

**LS:**<sup>89</sup> He uses this term “gentlemen” with a certain contempt. So he definitely has a democratic bias. Now let us read the next paragraph.

**Mr. Reinken:** “The love of our country is conducive to a purity of morals, and the latter is again conducive to the former. The less we are able to satisfy our private passions, the more we abandon ourselves to those of a general nature. How comes it that monks are so fond of their order? It is owing to the very cause that renders the order insupportable. Their rule debars them from all those things by which the ordinary passions are fed; there remains therefore only this passion for the very rule that torments them. The more austere it is, that is, the more it curbs their inclinations, the more force it gives to the only passion left them.”<sup>xx</sup>

**LS:** So we have here already the answer to the question, “why is patriotism virtue?”<sup>90</sup> [Montesquieu’s] answer is that it is a general passion. Generality is rationality, a thought which later on triumphs in Rousseau’s notion of the general will and especially in Kant’s moral philosophy.

[The general view of] virtue<sup>91</sup> [is that it] is something different from pleasure. It is, as we have<sup>92</sup> [seen], self-denial.<sup>93</sup> Now something very strange may take place: we may come to be attached to self-denial and this very self-denial may be a source of pleasure. Therefore the whole view which he presents is compatible with a hedonistic view. The example with the monks is, in no way accidental. Montesquieu’s democracy, as becomes quite clear from what we have seen and from what we will see, is not permissive. The very opposite, it is a very austere democracy. So it is a democracy dedicated to virtue, in

<sup>xix</sup> *Spirit of Laws*, vol. I, bk. V, ch. 2, 40.

<sup>xx</sup> *Spirit of Laws*, vol. I, bk. V, ch. 2, 40-41.



the sense of moral virtue. And, yet, it has this strange relation to democracy. How can we resolve this difficulty that moral virtue is and is not identical with the republican virtue? Let us first qualify this point before we go on.

We want to have a society in which no one can oppress anybody else—in this sense an egalitarian society. And that means that everyone must respect everybody else in all the relevant considerations, i.e. he must be just and equitable, he must be virtuous, [and have] self-control [and] self-restraint.<sup>94</sup> From this point of view,<sup>95</sup> the place where it is easiest to be morally virtuous is a non-permissive democracy, an austere democracy. But, on the other hand, one could also turn it around and say, virtue is simply the condition for making possible a democracy. And from this point of view, moral virtue, as distinguished from political virtue, would merely be a virtue which is oblivious of its origin. Virtue is primarily a requirement of society. But we forget somehow this requirement character of virtue and take it as an absolute, and this is the ordinary notion of morality.<sup>96</sup> Where Montesquieu stands in this respect is not yet clear. In the sequel he will make quite clear this austere character of democracy. Let us read the beginning of chapter 3.

**Mr. Reinken:** “A love of the republic in a democracy is a love of the democracy; as the latter is that of equality.

“A love of the democracy is likewise that of frugality. Since every individual ought here to enjoy the same happiness and the same advantages, they should consequently taste the same pleasures and form the same hopes, which cannot be expected but from a general frugality.

“The love of equality in a democracy limits ambition to the sole desire, to the sole happiness, of doing greater services to our country than the rest of our fellow-citizens. They cannot all render her equal services, but they all ought to serve her with equal alacrity. At our coming into the world, we contract an immense debt to our country, which we can never discharge.”<sup>xxi</sup>

**LS:**<sup>97</sup> Montesquieu does not deny a natural inequality. Men are by nature unequal, especially intellectually, but what *is* equal is the equality of duty.<sup>98</sup> The superiorities to be recognized in a democracy stem not from nature but from equality itself. Individuals are not superior because they deserve to be or to have superior positions, they have merely done their duty.<sup>99</sup> They distinguish themselves either on the battlefield or in council. They are superior because the fatherland needs their superiority. Even the most exalted services which an individual may render to the fatherland are nothing more than [what] the individual<sup>100</sup> [owes and is] nothing to be proud of. That is a very strict moral view. We find this also very well expressed at the end of chapter 5.

**Mr. Reinken:** “All inequality in democracies ought to be derived from the nature of the government—”

**LS:** “Democracy.”

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<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. V, ch. 3, 41.

**Mr. Reinken:** “—the nature of democracy, and even from the principle of equality. For example, it may be apprehended that people who are obliged to live by their labor would be too much impoverished by a public employment, or neglect the duties attending it; that artisans would grow insolent, and that—”<sup>xxii</sup>

**LS:** In other words, only for this reason may they be excluded and he gives other examples in the sequel.

Now to return to chapter 3. There is an inequality regarding wealth. What does this mean from a virtuous point of view? Simply that the wealthy have greater duties, they must pay more taxes, and so on<sup>101</sup>.

In the next paragraph, we can state this as follows: Morality is love of virtue. And in order to love virtue, one must actually enjoy virtue. Virtue must be pleasant<sup>102</sup> [and it] must be established or enforced by law.<sup>103</sup> [The title] of chapter 4 [is] “How Does One Inspire Love of Equality and Frugality,” and then at the end [he offers] a very true maxim. In order to love equality and frugality in a republic it is necessary that the laws are therein established. The qualification in a republic does not occur in the title. And this suggests to us that we still haven’t solved completely the problem of the relation of moral virtue<sup>104</sup>—love of equality and frugality—and political virtue—love of equality and frugality—in a republic and for the sake of the republic.

Chapter 5’s<sup>105</sup> heading is “How the Laws Establish Equality in a Democracy.” Chapter 6’s heading is “How the Laws Ought to Maintain Frugality in a Democracy.”<sup>106</sup> Sometimes he speaks of what the laws do and sometimes he speaks of what the laws ought to do. Now it is very important to see in each case why he speaks of an “is” or of an “ought.” Or, more simply, since the ought is a more simple procedure here, he is a teacher of legislators. He tells them what the laws ought to do. We must pay special attention to the cases in which he speaks of what the laws do.<sup>107</sup>

Why does he speak of that here? He speaks of the necessity in a republic or democracy to have equal division of the land. And there must be no possibility of getting two portions by marriage or heritage or what have you.<sup>108</sup> [I]n this connection he speaks of the special case about the middle of that chapter. “There was in Athens a law of which I do not know that anyone has understood the spirit—”

**Mr. Reinken:** “At Athens there was a law whose spirit, in my opinion, has not been hitherto rightly understood.”

**LS:** You see here you have a very clear meaning of spirit, and this book is called the *Spirit of the Laws*; and here spirit means the reason of the law. But, still, the word “spirit” has some connotation which the word “reason” does not have and which also plays a role in Montesquieu’s thought<sup>109</sup>. Perhaps we can gradually get the full meaning. Now go on.

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<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 5, 45.

**Mr. Reinken:** “It was lawful to marry a sister only by the father’s side, but it was not permitted to espouse a sister by the same venter (i.e. the mother’s side). This custom was originally owing to republics, whose spirit would not permit that two portions of land, and consequently two inheritances, should devolve on the same person.”<sup>xxiii</sup>

**LS:** Yes, now read the footnote to that.

**Mr. Reinken:** “Cornelius Nepos, in praefat. This custom began in the earliest times. Thus Abraham says of Sarah, ‘She is my sister, my father’s daughter, but not my mother’s.’ The same reasons occasioned the establishing the same law among different nations.”<sup>xxiv</sup>

**LS:**<sup>110</sup> In the Roman example, Cornelius Nepos, to which he refers,<sup>111</sup> [incest] is also spoken of<sup>112</sup>—I mean what according to the more general notions would be called incest as something permissible. And that explains sufficiently why he says here what the laws establish, as distinguished from what they ought to establish; because Montesquieu would never say that the legislator should establish a law which is based on a disregard of the ordinary prohibitions against incest. Later on, in the next chapter, he speaks suddenly of commercial democracies, after having questioned first<sup>113</sup> [if] a democracy can be commercial.

Now why is a commercial democracy possible? Chapter 6, the heading: “How Laws Ought to Foster Frugality in a Democracy.” Let us read the third paragraph.

**Mr. Reinken:** “True it is that when a democracy is founded on commerce, private people may acquire vast riches without a corruption of morals.”<sup>xxv</sup> This is because the spirit of commerce is naturally attended with that of frugality, economy, moderation, labor, prudence, tranquility, order, and rule. So long as this spirit subsists, the riches it produces have no bad effect. The mischief is, when excessive wealth destroys the spirit of commerce, then it is that the inconveniences of inequality begin to be felt.”<sup>xxvi</sup>

**LS:**<sup>114</sup> [So] the spirit of commerce is compatible<sup>115</sup> with democracies,<sup>116</sup> [because it] is not that of conspicuous consumption, but, such matters to the contrary: sobriety, thrift, and such things. It would be interesting to compare Montesquieu’s notion of the spirit of commerce with Max Weber’s notion of the spirit of capitalism which has something in common [with it]: the austere, puritan character. Although in Montesquieu’s case, [it is] in no way linked up with historical puritanism, as that goes without saying.

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<sup>xxiii</sup> In original: “It was lawful to marry a sister only by the father’s side, but it was not permitted to espouse a sister by the same venter. This custom was originally owing to republics, whose spirit would not permit that two portions of land, and consequently two inheritances, should devolve on the same person.” *Spirit of Laws*, vol. I, bk. V, ch. 5, 43.

<sup>xxiv</sup> *Spirit of Laws*, vol. I, bk. V, ch. 5, 43.

<sup>xxv</sup> In original: “True is it that when a democracy is founded on commerce, private people may acquire vast riches without a corruption of morals.”

<sup>xxvi</sup> *Spirit of Laws*, vol. I, bk. V, ch. 6, 46.

The end of this chapter might be of some interest.

**Mr. Reinken:** “In Greece there were two sorts of republics: the one military, like Sparta; the other commercial, as Athens. In the former, the citizens were obliged to be idle; in the latter, endeavors were used to inspire them with the love of industry and labor. Solon made idleness a crime, and insisted that each citizen should give an account of his manner of getting a livelihood. And, indeed, in a well-regulated democracy, where people’s expenses should extend only to what is necessary, every one ought to have it; for how should their wants be otherwise supplied?”<sup>xxvii</sup>

**LS:**<sup>117</sup> Here [we are] at the opposite pole of the welfare state where you<sup>118</sup> [cannot] raise the question: From which source should he get the necessary? He can only get it by his own labor and that makes him independent and<sup>119</sup> a true citizen.

At any rate, austerity [and] frugality are the essence of democracy, as Montesquieu understands it. And this is still noticeable in Tocqueville’s book on the American democracy. Tocqueville’s book, by the way, can be said to be an elaboration—and a first-rate elaboration—of suggestions of Montesquieu. The spirit of Tocqueville [and] the way in which he writes are descended straight, by legitimate marriage, from the spirit of Montesquieu. Yes, Mr. D.

**Student:** It seems that the problem with austerity and frugality in a democracy and the spirit of commerce—because if the spirit of commerce becomes too successful it would be very difficult to maintain austerity. You would be producing too much wealth to maintain the condition.

**LS:** Yes, but according to him, this will not follow because as long as this spirit of commerce subsists, the riches which wealth produces do not have a bad effect. If people use their excessive wealth for building temples or hospitals, orphanages, and so on, and do not spend it on themselves, no danger would follow. But let me come back to this point [about] austerity and frugality.<sup>120</sup> What Montesquieu understands by a democracy and what we may call a theocracy are not so remote from each other. I am not now speaking of the political structure [or] of a presence or absence of a priestly class, although that is a very important matter. I disregard that, but simply [point out that] the austerity and severity<sup>121</sup> [that go along] with theocracy<sup>122</sup> also [go along] with Montesquieu’s democracy. Mr. U.

**Student:** I just want to mention the example of Rockefeller, giving tips of a dime, as an example of this kind of a man who is animated by the spirit of commerce and is not corrupted by his wealth.

**LS:** Oh, yes, that factor is very powerful. But the commercial republic to which he alludes here prefigures what he will say later on about England and about the spirit of commerce in modern times.<sup>123</sup> There he will say something [of] which<sup>124</sup> we haven’t found hitherto the slightest suggestion: that in these modern commercial republics we

<sup>xxvii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 6, 46.

will find not pure manners, i.e. austerity, but gentle manners. That is a crucial distinction which he makes. And the morality toward which Montesquieu works is not purity but humanity. Now, if this is not a crucial ingredient of modern morality up to and including our time, then I must be completely mistaken in everything I say.<sup>125</sup>

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<sup>1</sup> Deleted "and."

<sup>2</sup> Deleted "of course."

<sup>3</sup> Deleted "Well."

<sup>4</sup> Deleted "sure, because it is ... what would the present-day social science relativist say to this argument? That."

<sup>5</sup> Deleted "the premise of the whole argument."

<sup>6</sup> Deleted "Well."

<sup>7</sup> Deleted "in."

<sup>8</sup> Deleted "Good."

<sup>9</sup> Deleted "we."

<sup>10</sup> Deleted "of course."

<sup>11</sup> Deleted "the character of the education."

<sup>12</sup> Deleted "and."

<sup>13</sup> Deleted "Good."

<sup>14</sup> Deleted "say."

<sup>15</sup> Deleted "Now in."

<sup>16</sup> Deleted "is."

<sup>17</sup> Deleted "as."

<sup>18</sup> Deleted "of course."

<sup>19</sup> Moved "again."

<sup>20</sup> Changed from "Virtue equal to justice, to reasonableness."

<sup>21</sup> Deleted "yes."

<sup>22</sup> Deleted "that is."

<sup>23</sup> Deleted "that is, that."

<sup>24</sup> Deleted "nobility."

<sup>25</sup> Deleted "of course."

<sup>26</sup> Deleted "speaks."

<sup>27</sup> Deleted "that is."

<sup>28</sup> Deleted "Is that ...

LS: Yes, literally.

Student: But."

<sup>29</sup> Deleted "Well."

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<sup>30</sup> Deleted "it would be."

<sup>31</sup> Deleted "no."

<sup>32</sup> Deleted "We would have to consult a French dictionary, I mean a historical dictionary. Will someone do that? Good."

<sup>33</sup> Deleted "of course."

<sup>34</sup> Deleted "Professor Strauss."

<sup>35</sup> Deleted "That is."

<sup>36</sup> Deleted "Good."

<sup>37</sup> Deleted "Student: How come?"

LS: I don't know."

<sup>38</sup> Deleted "of course."

<sup>39</sup> Deleted "So."

<sup>40</sup> Moved "which."

<sup>41</sup> Deleted "no, no."

<sup>42</sup> Deleted "of course."

<sup>43</sup> Deleted "we can say."

<sup>44</sup> Deleted "modern morality."

<sup>45</sup> Deleted "of course."

<sup>46</sup> Deleted "The."

<sup>47</sup> Deleted "rested on their behalf."

<sup>48</sup> Deleted "this must be clear."

<sup>49</sup> Deleted "at least."

<sup>50</sup> Deleted "from."

<sup>51</sup> Deleted "You know."

<sup>52</sup> Deleted "of religion and the."

<sup>53</sup> Deleted "Now."

<sup>54</sup> Changed from "say, courage, is a particular virtue."

<sup>55</sup> Deleted "of course."

<sup>56</sup> Deleted "of this."

<sup>57</sup> Deleted "then."

<sup>58</sup> Deleted "which is."

<sup>59</sup> Deleted "is."

<sup>60</sup> Deleted "the."

<sup>61</sup> Moved "general;" deleted "justice."

<sup>62</sup> Deleted "that."

<sup>63</sup> Deleted "there."

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<sup>64</sup> Deleted “that.”

<sup>65</sup> Deleted “because.”

<sup>66</sup> Deleted “and now.”

<sup>67</sup> Deleted “the.”

<sup>68</sup> Deleted “the.”

<sup>69</sup> Deleted “Now.”

<sup>70</sup> Deleted “Student: Well, it doesn’t have anything to do with the single vote, single person issue.”

LS: Yes, that is already too subtle for our purpose now.”

<sup>71</sup> Deleted “Now.”

<sup>72</sup> Deleted “of course.”

<sup>73</sup> Deleted “that is to say.”

<sup>74</sup> Deleted “then.”

<sup>75</sup> Deleted “and a more complicated situation.”

<sup>76</sup> Deleted “as we know.”

<sup>77</sup> Deleted “of course.”

<sup>78</sup> Deleted “and.”

<sup>79</sup> Deleted “of course.”

<sup>80</sup> Deleted “can.”

<sup>81</sup> Changed from “well, except such things like Switzerland, which are not fit for.”

<sup>82</sup> Deleted “and so on.”

<sup>83</sup> Deleted “Well, you see.”

<sup>84</sup> Deleted “that.”

<sup>85</sup> Deleted “That is clear. There are several passages which would confirm that. Now.”

<sup>86</sup> Deleted “you know.”

<sup>87</sup> Deleted “and then....”

<sup>88</sup> Deleted “You see.”

<sup>89</sup> Deleted “You see.”

<sup>90</sup> Deleted “And the.”

<sup>91</sup> Deleted “that is;” moved “the general view.”

<sup>92</sup> Deleted “heard.”

<sup>93</sup> Deleted “And.”

<sup>94</sup> Deleted “So, we can say.”

<sup>95</sup> Deleted “the whole of moral virtue.”

<sup>96</sup> Deleted “Now.”

<sup>97</sup> Deleted “In other words.”

<sup>98</sup> Deleted “Now.”

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- <sup>99</sup> Deleted “And.”
- <sup>100</sup> Deleted “has done his damn duty.”
- <sup>101</sup> Deleted “and so on.”
- <sup>102</sup> Deleted “virtue.”
- <sup>103</sup> Deleted “You see the chapter heading.”
- <sup>104</sup> Deleted “say.”
- <sup>105</sup> Deleted “the.”
- <sup>106</sup> Deleted “You see.”
- <sup>107</sup> Deleted “Now.”
- <sup>108</sup> Deleted “And.”
- <sup>109</sup> Deleted “and.”
- <sup>110</sup> Deleted “Well.”
- <sup>111</sup> Deleted “there.”
- <sup>112</sup> Moved “incest.”
- <sup>113</sup> Deleted “that.”
- <sup>114</sup> Deleted “In other words.”
- <sup>115</sup> Deleted “come to think of it.”
- <sup>116</sup> Deleted “why? Because the spirit of commerce.”
- <sup>117</sup> Deleted “In other words;” moved “we are.”
- <sup>118</sup> Deleted “could not.”
- <sup>119</sup> Deleted “that makes him.”
- <sup>120</sup> Deleted “And therefore.”
- <sup>121</sup> Deleted “going.”
- <sup>122</sup> Deleted “goes.”
- <sup>123</sup> Deleted “But.”
- <sup>124</sup> Moved “of;” deleted “which.”
- <sup>125</sup> Deleted “We must leave because the other class is already waiting.”



**Session 5: January 18, 1966**

**Leo Strauss:**<sup>1</sup> At the beginning you spoke of the three kinds of government and the corresponding three kinds of perfection. Let us accept that for the time being. The question arises, as you pointed out, which of the three in its perfect form is the best. And you answered rightly, republic, monarchy, and despotism in this descending order. I think that one cannot find fault with that.

But the only question that one must raise at this point is, can there be a perfection of despotism? Is not every imperfection of despotism a boon? I mean, for example just take the heading of [chapter] 14, “How Laws Are Relative to the Principle of Despotic Government”—he doesn’t say how they ought to be. This point is not conclusive but it is interesting. But this is a minor point.

Now what you said about especially chapter 13, this brief chapter on the idea of despotism, was perfectly sound. One can say all regimes have the same end but they go about it either stupidly, as does despotism, or wisely, as in the best case of a republic. What is<sup>2</sup> [the] end however?

**Student:** The three natural—

**LS:** No, the common end of all three.

**Student:** I think it is sex, nourishment, and—

**LS:** I see. In other words, the satisfaction of the basic needs?

**Student:** Yes.

**LS:** Yes, this is so, but, is this sufficient? Well, the great difficulty which we have in this part of the work is this: After he has stated, especially in the chapter on natural right in Book II, what the natural right is, i.e. the basic needs of men, he then suddenly confronts us with the three principles of the three kinds of government. And the highest is, of course, that of republics: virtue. And Montesquieu does not attempt here, at least not explicitly, to derive<sup>3</sup> virtue [for example], to say nothing of honor, from the fundamental needs. You see? These two thoughts are, apparently, entirely independent of each other.

But, if the republic is the best regime, then it would have to be a best regime with a view to the fundamental norm or standard supplied by natural right. And this is not done here by Montesquieu. That is the great difficulty.

And you made a number of points here. On one occasion you said there is no visible incentive toward republics; whereas there is one in the case of despotism. That is by no

means misleading, but, what would this imply if we take it literally? There is no incentive to republics, there is no natural drive toward it, [and] republics would be the least natural and despotism the most natural. This is an important consideration which we will take up sooner or later. But is this view of democratic republics being the best and wholly unnatural, did you ever hear such a thing?

**Student:** Thomas Hobbes.

**LS:** No. Hobbes says only that democracy is less advisable; he doesn't say that it is simply unnatural. No, no, a friend of democracy. Rousseau. Unfortunately, I forgot the exact wording in the *Social Contract*. But the complete transformation of the natural desires and the replacement by conventional things, this is the major thesis of Rousseau's *Social Contract*. In other words, a democracy requires a complete transformation of natural man, with his selfishness into the citizen, with his complete dedication to the common good and<sup>4</sup> complete self-denial. This is prepared, to say the least, by Montesquieu.

**Student:** That was indicated already in Books II and III by the fact that the legislators were mentioned, particularly with democracy.

**LS:** Yes, and we will find some more evidence for that while we go.

We haven't finished last time's assignment and we should do that first.<sup>5</sup> [W]e left off at Chapter 7 of<sup>6</sup> [Book V].

Now here is<sup>7</sup> an emphasis on the respect for old age, and especially in republics, which is only another facet of the thing which we have seen—a democracy, as Montesquieu conceives of it, is austere, puritan, and not permissive<sup>8</sup>. Therefore the respect of old age. Toward the end of this chapter, in the third paragraph before the end.

**Mr. Reinken:** "Paternal authority ended at Rome together with the republic. In monarchies, where such a purity of morals is not required, they are controlled by no other authority than that of the magistrates."<sup>i</sup>

**LS:**<sup>9</sup> [In other words] there is<sup>10</sup> [no] need for the paternal authority in the severe Roman sense. In monarchy where one doesn't have to do with "so pure morals"—virtue, allegedly only political virtue, is in fact, as we see again, moral virtue. Purity of morals is the lifeblood of republics.

Read the beginning of chapter 8.

**Mr. Reinken:** "If the people are virtuous in an aristocracy, they enjoy very nearly the same happiness as in a popular government, and the state grows powerful."

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. V, ch. 7, 49.

**LS:** So, you see, “if.”<sup>11</sup> In democracy, the people are<sup>12</sup> virtuous and therefore they will<sup>13</sup> enjoy<sup>14</sup> public happiness. The implication is that the best order is democracy, as we know anyway, but it is important to note that.

Read the next paragraph.

**Mr. Reinken:** “The spirit of moderation is what we call virtue in an aristocracy; it supplies the place of the spirit of equality in a popular state.”<sup>ii</sup>

**LS:**<sup>15</sup> Here we have another definition of the principle of democracy. We have heard virtue, we hear now spirit of equality. What is the connection between equality and virtue, i.e. moral virtue? What does moral virtue have to do with equality<sup>16</sup>? The fact that this question is today very rarely raised doesn’t mean that it shouldn’t be raised.

**Student:** Well, moral virtue has to do with self-restraint, which is necessary in order to respect the equality of others.

**LS:** What is the simple and most popular rule of morality? The golden rule, equality.<sup>17</sup>

Later on in [the middle of this] chapter [he makes] clear<sup>18</sup> another aspect of this problem.<sup>19</sup> The laws must forbid them also commerce, in the aristocracy.

**Mr. Reinken:** “The laws should likewise forbid the nobles all kinds of commerce: merchants of such unbounded credit would monopolize all to themselves.”

**LS:** Yes, if the nobles were the merchants.

**Mr. Reinken:** “Commerce is a profession of people who are upon an equality—”<sup>iii</sup>

**LS:** “Who are equal,” so commerce and equality also go together, and therefore there is a connection between democracy and commerce.<sup>20</sup>

This is the last chapter we were supposed to discuss last time and I think now that we should discuss coherently the whole problem of democracy [and] virtue<sup>21</sup> [in] Montesquieu.

First of all, let us contrast, again, Montesquieu’s discussion with [the] present-day discussion. Montesquieu’s understanding of democracy is, obviously, radically different from [the] present-day understanding of democracy.<sup>22</sup> To use this simple expression, present-day democracy is permissive; whereas, democracy as Montesquieu understood it is austere and puritan. There can be no doubt about that.

But, to speak now of the theoretical differences between present-day discussions and Montesquieu’s discussion, in which form is this question discussed in the present-day?

<sup>ii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 8, 49.

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 8, 51.

This question of the principle of democracy? What makes people adhere to a democratic regime? This question is doubtless discussed by present-day political scientists but from a different point of view.

**Student:** Loyalty?

**LS:** Loyalty, yes. I think this is the most obvious parallel. And one point which is mentioned invariably when people discuss loyalty to modern democracy today is—well, what would people answer today in general terms? What makes democracy stick? What makes people loyal to democracy?

**Student:** They see their selfish interests—

**LS:** Yes, but on the other hand—

**Student:** The satisfaction of their desires— [break in the tape]

**LS:** And that is called ideologies, because people would say democracy satisfies the desires of the individuals better than other regimes. This is not simply true but is the content of an ideology. Now what about ideology in Montesquieu? Of course the word doesn't occur there, it was coined much later than Montesquieu, but [there is] an equivalent of it.

**Student:** Prejudices.

**LS:** Yes, but he doesn't speak of prejudices here. He has a word about it, he takes up this question. For example, virtue; what has virtue to do with prejudices or ideologies? Or, for that matter, honor, or fear? He calls these things sentiments. In other words, the theoretical element which we imply when we speak of ideologies is not stressed by him in any way.

Now, this much only as a provisional reminder of the differences between present-day thought and Montesquieu. Let us now discuss the problem of democracy and virtue more coherently.

There are certain things which are presupposed by Montesquieu even if he never mentions them, simply because they were the common inheritance of the Western world. According to the most common view which is still intelligent, morality or virtue has two qualities. First, it is something choice-worthy for its own sake—what the Greeks called noble—and it is useful—useful at least for the community at large. But here there is a difficulty because virtue may be useful for the community and not so useful for the individual. The simplest case of course is of the man in Vietnam today for whom it may not be useful, in the crude sense, to stay there although it may be useful for the United States that he be there. But the classic case is of course the tyrant whose private interest is radically different from the public interest; and he succeeds in preferring his private interest.<sup>23</sup>

[L]et us, after having reminded ourselves of this,<sup>24</sup> [return] to Montesquieu. First, he makes a distinction between moral virtue and political virtue, i.e. he gets rid of the question of virtue as choice-worthy for its own sake. Political virtue is the virtue required for bringing into being and preserving a republic in a particular democracy. But, as we have seen more than once, the distinction between moral virtue and political virtue does not work. So, political virtue is, in fact, moral virtue. But, still, virtue is said to be particularly close to democracy. Now, in order to clarify<sup>25</sup> [this], we shall speak of moral virtue. Moral virtue is supposed to be closer to democracy than any other regime. I suppose we have heard this quite frequently since: that democracy is the most moral regime in every respect—no secret diplomacy, no secrecy in government<sup>26</sup>.

But,<sup>27</sup> [to] state it independently of the way we state it now: democracy is the home of moral virtue; i.e. it is, to say the least, much easier to act morally in a democracy than in any other regime. The common people are more decent than the higher classes. This has played a great role, especially in the revelation of the French revolution. An element implied here is the one which we have touched upon before, namely, a certain understanding of moral virtue according to which virtue is reduced to what Aristotle called general justice—the concern with the common good. And therefore the transition to political virtue is easy.

If one takes the relation between virtue and democracy quite seriously and quite literally, then one would arrive at the conclusion that moral virtue, insofar as it is distinct from political virtue, is only political virtue which has forgotten its origin. Primarily, it is this social virtue in a society in which everyone counts as much as everybody else, but, this origin, as it were, can be forgotten. Now this is insufficient because when one reads Montesquieu, one sees that there is a genuine excess of moral virtue beyond political virtue. I remind you of an example in a passage where he says virtue is not dangerous to despotism. Now, if virtue were identical with political virtue, public spiritedness, then, [of] course, it would be dangerous to despotism. Is this not obvious? And therefore, there is such an excess.

Now, in order to find an answer, we must remind ourselves of something which belongs to the past, [the] time and thought preceding Montesquieu. If one reads Plato carefully, and even Aristotle, although Aristotle is more complex, one sees that according to these men there are two sources of what we call moral virtue. Incidentally, there is no moral virtue in Plato, the very term has been coined by Aristotle, which one must never forget. The first is of course the *polis*, the society. Many actions which we call virtuous are immediately intelligible if we see them as needed for the preservation of society. But this is not sufficient. There is an excess of virtue beyond what is needed for the *polis*. Now according to the classics, this other, this excess, is intelligible if we consider moral virtue as needed for philosophy or a life of contemplation. So, the *polis* and philosophy<sup>28</sup> are the two sources of morality which require almost the same courses of action, but from different points of view; and, in addition, as I pointed out and as I made clear, not identically the same action. There is a broad agreement, not more.

Now the question is, is there anything of philosophy as a source of morality in Montesquieu? There is one passage which is relevant for this point and that is in chapter 12 of Book V. Now you see the strange heading: “The Continuation of the same Subject.” He doesn’t hesitate to write chapters of many, many pages,<sup>29</sup> [so] why does he make this separate? Because<sup>30</sup> the point which he makes in these two paragraphs is of special importance. Yes?

**Mr. Reinken:** “Let us not look for magnanimity in despotic governments; the prince cannot impart a greatness which he has not himself—”

**LS:** Yes, greatness in the sense of greatness of soul.

**Mr. Reinken:** “—with him there is no such thing as glory.

“It is in monarchies that we behold the subjects encircling the throne, and cheered by the irradiancy of the sovereign; there it is that each person filling, as it were, a larger space, is capable of exercising those virtues which adorn the soul—”

**LS:** No, “which give to the soul.”

**Mr. Reinken:** “—which give to the soul, not with independence, but with true dignity and greatness.”<sup>iv</sup>

**LS:** No<sup>31</sup>, not “independence,” but “grandeur.” Here he speaks of true virtue—that is implied—as independence of the soul or at least connected with it. Independence of the soul as distinguished from grandeur or such. That is a notion of virtue which is not political and has no relation to [the] political and yet is of the core of virtue. This independence of the soul is not in itself essentially related to any particular regime—only in a secondary way. For a better understanding of this point, you might read Machiavelli’s *Discourses*, Part III, chapter 31, but you have to read it carefully. And there you would find a link-up between this independence of the soul and knowledge.<sup>32</sup> This is<sup>33</sup> the clearest indication of the root of virtue which is not political.

Now let us turn to the beginning of today’s assignment, chapter 9. Let us read first the heading of chapter 9 and the headings of the three preceding chapters.

**Mr. Reinken:** “In what Manner the Laws are in Relation to their Principle in Monarchies.”

**LS:** Yes, “are relative to their Principle in Monarchies.”

**Mr. Reinken:** [Chapter] 8: “In what Manner the Laws Should Relate to the Principle of Government in an Aristocracy.” [Chapter] 7: “Other Methods of Favoring the Principle of Democracy.” [Chapter] 6: “In what Manner the Laws ought to Maintain Frugality in a Democracy.”

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<sup>iv</sup> *Spirit of Laws*, vol. I, bk. V, ch. 12, 57.

**LS:** Which seems to suggest in the context that monarchy is, more or less, what it ought to be. In other words, the French monarchy as the model<sup>34</sup> [of] a monarchy [is] all right—there is not much to change in it. But this is not so true of republics where the differences are greater.

We cannot possibly discuss everything. When he speaks of the prerogatives of the nobles in this chapter, about the seventh paragraph.

**Mr. Reinken:** “All these privileges must be peculiar to the nobility, and incommunicable to the people, unless we intend to act contrary to the principle of government, and to diminish the power of the nobles together with that of the people.”<sup>v</sup>

**LS:** Yes, how is the power of the people diminished by the privilege of, say, primogeniture? Yes.

**Student:** Aren’t the nobles supposed to act as a check against too much power.

**LS:** In a way, sure. It surely implies that the power of the nobility is in the interest also of the people. We could easily give it a normative form: The power of the nobility ought to be in the interest of the people otherwise the nobility has no *raison d’être*. The argument of Tocqueville in his book on the ancient regime [is] that the French nobility did have a great function in the middle ages and the early modern times and by losing its function it became merely an idle class of privileged people and therefore arousing just hatred and antagonism. Read the paragraph toward the end of this chapter.

**Student:** “The laws ought to favor all kinds of commerce consistent with the constitution, to the end that the subjects may, without ruining themselves, be able to satisfy the continual cravings of the prince and his court.”<sup>vi</sup>

**LS:** So, in other words, it is absolutely necessary to keep the people alive. Well, that is no “ought” to speak of, measured by the standards of present-day relativism—the desire for ruining, destroying, killing people, say, by nuclear bombs, is regarded as a perfectly legitimate goal, as you know. I have read it with my own eyes, Bertrand Russell saying that reason cannot say anything to a man who says let’s use the nuclear bomb and destroy the human race.<sup>35</sup> This kind of strictly schoolroom relativism is<sup>36</sup> never considered by Montesquieu.<sup>37</sup> A certain well-being of the people is the norm for judging any kind of government.

Now in the next chapter, which is the central chapter of Book V, he speaks of the promptitude of execution in monarchy, namely, compared with republics [but] not with despotic government. And precisely because it is easy to act quickly in monarchies, there is a need for a break.<sup>38</sup> This break is supplied, according to Montesquieu, by the French parliaments, i.e. the judicial bodies.<sup>39</sup> This privilege of the parliaments has a further

<sup>v</sup> *Spirit of Laws*, vol. I, bk. V, ch. 9, 54.

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. V, ch. 9, 54.

function, which we will make clearer, of laying the foundation of the separation of the judicial power from the power of administration, of which he does not yet speak here.

Chapter eleven, Mr. G. pointed out that this is a great praise of monarchy. The very title: "Of the Excellence of a Monarchical Government." But it is a qualified praise; at the very beginning he says that. Would you read only the first sentence.

**Mr. Reinken:** "Monarchy has a great advantage over a despotic government."<sup>vii</sup>

**LS:** Yes, what about republics? I do not think that you will find a statement to the effect that monarchy has a great advantage over republican government.

**Student:** There is<sup>40</sup> in the preceding chapter.

**LS:** I see, regarding the quickness. Yes, very right. Literally identical. But it is interesting to compare the headings of the two chapters. In the same chapter 11, it is made clear and the point was stated by Mr. G. that the people are less powerful in a monarchy than in [a] despotism. And that is connected with the fact, stated a little bit later in that book, in that chapter, that "all our histories are full of civil wars without revolutions. The histories of despotic governments are full of revolutions without civil wars."<sup>41viii</sup> [Here] "revolution"<sup>42</sup> does not mean exactly what it means today.

**Student:** The palace *coup d'état*.

**LS:** Yes, but why not speak simply of the assassination of rulers and make it quite clear. I do not know French history well enough but the killing of kings was extremely rare. In German history there was only one emperor in<sup>43</sup> [its] long history who was assassinated. And assassination in despotic regimes is very frequent up to the present day. Now what is the purport of all this? I mean, why is this important that you have civil wars<sup>44</sup> [and] a nobility making all kinds of troubles, but otherwise a kind . . . of which you cannot expect in a despotism, why is this important? Because the breaks exist in monarchy; he calls [them]<sup>45</sup> the independent intermediary powers: the nobility, clergy, parliaments, and so on<sup>46</sup>. [They] are absent from despotism. Mr. B.?

**Student:** This point, in a way, makes the chapter title ambiguous because the excellence of monarchic government seems to have a lot to do with the advantage of a single ruler to be a monarch rather than a despot.

**LS:** There will be a sort of turbulence if he has a war-like nobility but the stability of, say, his family.<sup>47</sup> I mentioned the examples of Germany and<sup>48</sup> France; I naturally didn't mention the example of England where there was more than one king who did not die a natural death,<sup>49</sup> which led to very interesting consequences in the future. I believe that Montesquieu never discusses this interesting fact: the importance of regicide not only in

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<sup>vii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 11, 55.

<sup>viii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 11, 56.



1648 but also throughout the Wars of the Roses and so on, and the absence of these things from French and German history.

A bit later, in the last paragraph of this chapter, “The people who live under a good political order—”

**Mr. Reinken:** “are happier than those who without rule or leaders wander about the forests.”<sup>ix</sup>

**LS:** Yes, that is very important. He means that people who are<sup>50</sup> civilized, in contradistinction to [being] primeval savages.<sup>51</sup> The happiness of the people is the general standard, that one thing which Montesquieu has in mind when he speaks of despotic regimes.<sup>52</sup> [A]ccording to the interpretation given by Mr. G., that despotic regime has the same end, in a way, as [a] republican regime, only<sup>53</sup> [the despot] goes about it in a foolish manner. Now what is that one end? One could say, the happiness of the people. That is<sup>54</sup> true. It needs a long clarification to become practical and meaningful but it is still<sup>55</sup> [true].

There is another formula for that. One can also call it public or political happiness, as Locke calls it. And now from the point of view of the individual,<sup>56</sup> [what] would this be called? Happiness of the people is a collective end but what is it from the point of view of the individual?

**Student:** In part, isn't it liberties?

**LS:** Not yet, that comes up later. Comfortable self-preservation<sup>57</sup>. The question arises, how can comfortable self-preservation be brought into harmony with the happiness of the people? The wonderful thing would be if they would coincide, that would simplify all problems greatly, but there are probably some tensions and therefore the great question.

Now, we have discussed chapter 12 before. This chapter makes clear the trans-political meaning of virtue, but at the same time<sup>58</sup> it constitutes the end of the discussion of the non-despotic regimes. Now let us read again this brief chapter 13.

**Mr. Reinken:** “When the savages of Louisiana are desirous of fruit, they cut the tree to the root, and gather the fruit. This is the despotic government.”<sup>x</sup>

**LS:** So, what [inaudible words]<sup>xi</sup> in the eighteenth and nineteenth century called, from a somewhat different perspective, “terrible simplifiers.” He saw these furors of the

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. V, ch. 11, 56.

<sup>x</sup> *Spirit of Laws*, vol. I, bk. V, ch. 13, 57.

<sup>xi</sup> The phrase is associated with the historian Jacob Burckhardt (1818-1897), who describes as “terrible simplifiers” the potential demagogues of the modern world against whom he warns. This does not account for Strauss's reference to the 18<sup>th</sup> century, so perhaps there is an older origin for the term used by Burckhardt.

twentieth century coming, to some extent foreshadowed by Napoleon. Terrible simplifications, that is the peculiarity of despotic regimes. Yes.

**Student:** Is the Louisiana meant to be a reference to France.

**LS:** No.<sup>59</sup>

**Student:** Well, why the savages of Louisiana and not someone else?

**LS:** He has read this,<sup>60</sup> he quotes “Edifying Letters.” He had read it! He gives you his sources, you see. Some traveler had observed that.

Then there follows a criticism of despotic governments and this seems to be at times a sheer satire, in the third paragraph for example.

**Mr. Reinken:** “If a prince is shut up in a seraglio, he cannot leave his voluptuous abode without alarming those who keep him confined. They will not bear that his person and power should pass into other hands. He seldom, therefore, wages war in person, and hardly ventures to entrust the command to his generals.”<sup>xii</sup>

**LS:** There have been other famous despots, the sultans who made Turkey such a great danger to the West in the sixteenth century and so on. We have seen some other remarks of Montesquieu on despotism which seem to be exaggerated. And I suggested on an earlier occasion just this point. But the question is, was it a conscious exaggeration on the part of Montesquieu?<sup>61</sup> Did he not honestly see despotism as the great enemy of the human race?<sup>62</sup>

What arguments have been deduced by other people after Montesquieu, including our time, in favor of despotism or at least as apologies for despotism? One point is made by Montesquieu himself and we shall have to discuss this carefully. Although Montesquieu condemns despotism as a terrible enemy of the human race, he says that in the largest part of the globe despotism is simply necessary and hence inevitable. And then we are in the frightful condition that we have to accept a great plague as, relatively, a blessing<sup>63</sup> — [at least when] compared with a complete absence of government or anarchy.

**Student:** Isn't his motive partly that he takes what is bad about monarchy, including the French monarchy, and satirizes it under the title of despotism? The king shut up in his seraglio reminds you of the house of Bourbon which moved from Paris to Versailles during the reign of Louis XIV.

**LS:** That is true. In other words that is partly a satire on the French monarchy, and the French monarchy to the extent to which it is bad is [a] despotism.<sup>64</sup> But, still, was there ever a man, another politician [or] a theoretician, who defended despotism? Well, there is one very famous book, yes.

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<sup>xii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 14, 57.

**Student:** The *Leviathan*?

**LS:** No, Hobbes is in favor of absolute monarchy and he says that monarchy is better than republican government, that is quite true. And he denies that you can make a tenable distinction between monarchy and tyranny and in that sense you are right.<sup>65</sup> On the other hand, there was also such a strong prejudice against Hobbes.

Well, it is a classic book<sup>66</sup>, Xenophon's *Education of Cyrus*.<sup>67</sup> Is not Cyrus the founder of the Persian Empire<sup>68</sup>, and especially as presented by Xenophon,<sup>69</sup> a man who spends all his days, not to mention his nights, in his harem, but is a marvelous ruler, the perfect ruler. And the way some of the sultans were presented by Machiavelli<sup>70</sup> supports the same view. In other words, there is no necessity why a despot should be such an abomination as he is presented. What is, then, the implied argument of Montesquieu that he is not impressed by that?

**Student:** Doesn't even Xenophon make it clear at the end of the book on Cyrus—

**LS:** You mean that his immediate successors were such products of the harem and despicable utterly. And now if one would think of this beautiful document of despotism which he surely knew, I think, and which I have no doubt some of you know, the *Arabian Nights*, in which there is so much shown of humanity and virtue and also of vice I admit. But what is the point in the *Arabian Nights* simply stated? I think that the whole story shows the terrible character of despotism. These stories are all told in order to save the life of an innocent human being. She tells the stories in order to keep the sultan curious and the continuation the next night is the only way she can save herself. So, there is no doubt that Montesquieu meant this seriously.

And, in addition, we have had some experiences in between which help us to understand Montesquieu. Let us look in chapter 14. There was a very great despot in Montesquieu's time, Peter the Great of Russia.

**Mr. Reinken:** "Observe how industriously the Russian government endeavors to temper its arbitrary power—"

**LS:** More literally, "attempts to get out of despotism."

**Mr. Reinken:** "—which it finds more burdensome than the people themselves. They have broken their numerous guards, mitigated criminal punishments, erected tribunals, entered into a knowledge of laws, and instructed the people.<sup>xiii</sup> But there are particular causes that will probably once more involve them in the very misery which they now endeavor to avoid."

**LS:** Yes, that could have been written in the twentieth century. Now the next paragraph.

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<sup>xiii</sup> In original: "They have broken their numerous guards, mitigated criminal punishments, erected tribunals, entered into a knowledge of the laws, and instructed the people."

**Mr. Reinken:** “In those states—”

**LS:** Meaning despotic states.

**Mr. Reinken:** “—religion has more influence than anywhere else; it is fear added to fear.”<sup>xiv</sup>

**LS:** That is very important for the liberal character of Montesquieu’s thought and his place in that liberal tradition; this link-up between political absolutism and religious absolutism—a great theme of the whole western tradition. We have seen this before.

He also takes up, about one page later, a question which we have observed again in Russia: “By the laws of Muscovy—”

**Mr. Reinken:** “—the Czar may choose whom he has in mind for his successor, whether of his own or of a strange family. Such a settlement produces a thousand revolutions, and renders the throne as tottering as the succession is arbitrary. The right of succession being one of those things which are of most importance to the people to know, the best is that which most sensibly strikes them. Such as a certain order of birth. A settlement of this kind puts a stop to intrigues, and stifles ambition; the mind of a weak prince is no longer enslaved, nor is he made to speak his will as he is just expiring.”<sup>xv</sup>

**LS:**<sup>71</sup> This problem of succession is<sup>72</sup> a major problem in Soviet Russia today, especially in the case of Khrushchev, which only confirms this point. An order of succession which is independent of the will of the ruler is an important limitation of that ruler.<sup>73</sup> If you have, say, the monarchic succession that the oldest son becomes the prince, that is an important limitation. But what about the fact that in England, this home of freedom, Henry VIII succeeded in determining his succession independently of any such feudal notions of primogeniture and so on? Why is this in England slightly different from the situation in Russia when Peter the Great had his son murdered or executed and determined his successor?

**Student:** He did so by act of Parliament.

**LS:** Yes,<sup>74</sup> whatever that might have meant, it is not unimportant.

**Student:** Doesn’t the discussion about Peter the Great suggest what was stated in an earlier place, that a citizen who was virtuous in a despotic state would bring about the ruin of the state, either then would succeed in overthrowing or would bring about his own rule? But does it suggest that the ruler himself could be possessed of some political virtue?

**LS:** That is, of course, possible but the question is how far can you trust mere possibilities. Where do you have a reasonable guarantee? That is always a question.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. V, ch. 14, 59.

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. V, ch. 14, 61.

Therefore laws and institutions are necessary which, at least, could give you some guarantee.

**Student:** I thought the question referred to the possibility that Peter's actions were very detrimental to Russia because he tried to do what was impossible, given the despotic state, [and in] trying to change it he only introduced greater confusion.

**LS:** Well, I do not believe that it meant the impossibility, but still, qualified by the "perhaps." There are particular causes which will bring it back "perhaps" to the misfortune from which it tried to escape.

Now in the last paragraph of this chapter 14.

**Mr. Reinken:** "After what has been said, one would imagine that human nature should perpetually rise up against despotism. But, notwithstanding the love of liberty, so natural to mankind—"

**LS:** "In spite of man's love for liberty," "natural" is not there.

**Mr. Reinken:** "—notwithstanding their innate detestation of force and violence—"

**LS:** There is nothing of "innate."

**Mr. Reinken:** "—most nations are subject to this very government. This is easily accounted for. To form a moderate government, it is necessary to combine the several powers; to regulate, temper, and set them in motion; to give, as it were, ballast to one, in order to enable it to counterpoise the other. This is a masterpiece of legislation, rarely produced by hazard, and seldom attained by prudence. On the contrary, a despotic government offers itself, as it were, at first sight; it is uniform throughout; and as passions only are requisite to establish it, this is what every capacity may reach."<sup>xvi</sup>

**LS:** This was better understood by Mr. G. In a sense, despotism is the most natural regime. The inclination toward it is the strongest.

Incidentally, shortly before, in this same chapter: "The despotic princes take a great many wives, especially in that part of the world where absolute power is in some measure naturalized, namely, Asia."<sup>xvii</sup> This fact led<sup>75</sup> to the term Oriental despotism. And this has played a certain role in the present-day discussion<sup>76</sup> [of why it is] that communism is so powerful in Russia and in China, i.e. in parts of the world in which despotism was always endemic. This is<sup>77</sup> a point which a Marxist could never admit.

In the beginning of the next chapter, "In warm climates, where despotic power ordinarily rules," [there] is an indication<sup>78</sup>, which we will develop at length later, of the connection between regimes and climate.<sup>79</sup> Men are not simply free to choose a regime which they

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. V, ch. 14, 62.

<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 14, 61.

like and are limited severely and compelled to accept a regime that may very well be inferior.

We have seen this reference to freedom. Mr. G. said something about the word freedom first occurring there. But this is not quite correct<sup>80</sup> because it occurred at least in Mr. S.'s. We had already a passage where it first occurred. But freedom becomes gradually the central theme—he takes his time.

Now in the third paragraph of chapter 15.

**Mr. Reinken:** “The cession of goods is naturally admitted in moderate governments, but especially in republics, because of the greater confidence usually placed in the probity of the citizens, and the lenity and moderation arising from a form of government which every subject seems to have preferred to all others.”<sup>xviii</sup>

**LS:** Moderate governments means monarchy plus republic, i.e. non-despotic governments. But there is a special connection with freedom here<sup>81</sup> [with] these regimes<sup>82</sup>. These regimes, especially republics, are self-imposed regimes and hence freely chosen. [He spoke of] men's love for freedom<sup>83</sup> at the end of chapter 14, although he did not speak of the natural character. Something of this kind is implied. Again, I remind you of the Lockean, and to some extent, the Hobbean argument: Self-preservation implies the right to judge of the means of self-preservation.<sup>84</sup> You cannot preserve yourself if you cannot judge<sup>85</sup> [and lack] the right to judge the means of that preservation, and<sup>86</sup> to act on the judgment. This is a crucial part of freedom; to that extent freedom is essential to this whole notion of natural right and admitted even by Hobbes, although in a very precarious manner.

A little bit later in chapter 15 he calls the<sup>87</sup> [despotically] ruled countries, “these unhappy countries.” Now that only confirms the point we made before: the criterion is the happiness of the people. Toward the end of this chapter.

**Mr. Reinken:** “As this is a common crime under such a government, confiscations are very useful. By these the people are eased; the money drawn by this method being a considerable tribute which could hardly be raised on the exhausted subject: neither is there in those countries any one family which the prince should be glad to preserve.”<sup>xix88</sup>

“In moderate governments it is quite a different thing. Confiscations would render property uncertain, would strip innocent children, would destroy a whole family, instead of punishing a single criminal. In republics they would be attended with the mischief of subverting equality, which is the very soul of this government, by depriving a citizen of his necessary subsistence.”<sup>xx</sup>

<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 15, 62–63.

<sup>xix</sup> In original: “By these the people are eased; the money drawn by this method being a considerable tribute which could hardly be raised on the exhausted subject: neither is there in those countries any one family which the prince would be glad to preserve.”

<sup>xx</sup> *Spirit of Laws*, vol. I, bk. V, ch. 15, 63.

**LS:** In despotism one can use these gangsters as [a] kind of sponge, getting back the liquid which they have illicitly gotten. But, more strictly speaking, in despotism certain forms of injustice are useful, perhaps even necessary. This is an indication of the complexity of the problem of justice. Punishing<sup>89</sup> the innocent by confiscation of the family fortune may very well be the wise thing to do in this kind of regime.

There is a note here which is, I believe, the first criticism of Athens: "It seems to me that one liked confiscations too much in the republic of Athens." That, I think, is the first criticism.<sup>90</sup>

Now, the chapter on presents,<sup>91</sup> chapter 17. Let us read the third paragraph.

**Mr. Reinken:** "In a republic, presents are odious, because virtue stands in no need of them. In monarchies, honor is a much stronger incentive than presents. But in a despotic government, where there is neither honor nor virtue, people cannot be determined to act but through hope of the conveniences of life."<sup>xxi</sup>

**LS:**<sup>92</sup> This commentator here says: "Would hope for commodities of life be another resort of despotic government and a complement of fear." What do you say to this proposal? Hitherto, you remember, we have heard only of fear as a principle of despotism; now we find hope, the opposite of fear, as one. Is this not very strange? There is another reference to the same thing at the beginning of the next chapter, if you will read that.

**Mr. Reinken:** "In despotic governments, where, as we have already observed, the principal motive of action is the hope of the conveniences of life."<sup>xxii</sup>

**LS:** Yes, that is enough. So, he repeats it here. What is the relation between fear and the conveniences of this life, to change the formula a bit?<sup>93</sup>

**Student:** Only if you desire things in life are you afraid to lose it.

**LS:** Yes, only you must contrast it with the principles of the two other regimes, monarchy and republic.

**Student:** Well, if despotism seems to be preservation, and comfortable self-preservation, honor risks self-preservation and virtue risks one's comfort.

**LS:** Yes, so it is really the concern with the pleasantries of life and is only the reverse side of fear. Because fear means the concern with the preservation of life; but self-preservation has naturally the tendency to expand to the desire for comfortable self-preservation. People can be satisfied with very little, with a bare minimum, of self-preservation, but it is possible to enlarge that very easily. One way is to make them

<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. V, ch. 17, 65.

<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 18, 66.

familiar with a more comfortable form of self-preservation with advertisements and other kinds of things and after some time it will be as necessary to them as simple preservation.

There is another point in the chapter on presents. In chapter 18, “But in a republic where virtue rules, a motive which suffices to itself and excludes all others, the state only rewards by witnessing.”<sup>xxiii</sup> How does he say that?

**Mr. Reinken:** “by public attestations of that virtue.”

**LS:**<sup>94</sup> This [is the] strict, extreme view of virtue which we have seen.

It is also of some interest to see that in chapter 18, when he speaks of the Roman Empire, that the rule of a good Roman emperor was<sup>95</sup> monarchy and that of a bad [emperor] was despotism. Here you have an order which oscillates between monarchy and despotism, and to a certain degree this is true of the French monarchy as well, but not as massively visible as in the case of the Roman monarchy.

This severe view of virtue is repeated in the last chapter of this book. We will read that in the second paragraph when he speaks of the first question.

**Mr. Reinken:** “It is a question whether the laws ought to oblige a subject to accept a public employment. My opinion is that they ought in a republic, but not in a monarchical government. In the former, public employments are attestations of virtue, depositions with which a citizen is entrusted by his country, for whose sake alone he ought to live, to act, and to think; consequently he cannot refuse them.”<sup>96</sup>

**LS:** Yes, now here you see the extreme statement: complete dedication to the fatherland. This is complete disregard of oneself.<sup>97</sup> Later on when he comes to the second question: “In republics virtue demands that one makes to the state—”

**Mr. Reinken:** “—a continuous sacrifice of our persons and of our repugnances for the good of the state.”<sup>xxiv</sup>

**LS:** Yes, this is the same spirit. And a little bit later in the third question, the fourth paragraph: “In a nation where the republic conceals itself under the form of monarchy.” Which is that?

**Student:** England.

**LS:** England, sure. You know England has not become an animated theme; that will be achieved by Book XI. But he is carefully and cautiously preparing that great step.

In the sequel, in discussing the fourth question, Montesquieu makes quite clear that he is in favor of venality of offices in monarchies because the venal offices create a power

<sup>xxiii</sup> *Spirit of Laws*, vol. I, bk. V, ch. 19, 67.

<sup>xxiv</sup> *Spirit of Laws*, vol. I, bk. V, ch. 19, 67.



relatively independent of the king. The government cannot, as long as it claims to be tolerably decent, take away the offices which it has sold. So, there is a certain independence<sup>98</sup>—what we might call the civil service—of the arbitrary will of the king.<sup>99</sup> He is a very wise man and [does] not expect perfection everywhere.

Book VI deals with the simplicity of laws, or complexity. Now, generally speaking, the thesis is exaggerated by Montesquieu that laws can be extremely simple under despotism and they must be complicated [and] complex under monarchies and especially under republics.<sup>100</sup> The key point is the difficulty toward which he is working, the independence of the judges. You can have a very nice system, a wise judge appointed by the ruler; and people come before him and he, without paying any attention to law, only looking at what is fair and equitable and so on, makes his decision. That seems to be much better than to depend on complicated laws and therefore on lawyers [and] enormous costs of adjudication<sup>101</sup>. Montesquieu takes here<sup>102</sup> a very firm stand against this delusion. Let us only see in chapter 2 at the beginning.

**Mr. Reinken:** “We hear it generally said that justice ought to be administered with us as in Turkey.”

**LS:** Yes, that is the equitable judgment made without any formalities by a sage, as it were, who is not hampered by any laws. But what is Montesquieu’s point? Let us see from the next paragraph.

**Mr. Reinken:** “If we examine the set forms of justice with respect to the trouble the subject undergoes in recovering his property or obtaining satisfaction for an injury or affront, we shall find them doubtless too numerous: but if we consider them in the relation they bear to the liberty and security of every citizen shall often find them too few; and be convinced that the trouble, expense, delays, and even the very dangers of our judiciary proceedings are the price that each subject pays for his liberty.”<sup>xxv</sup>

**LS:** Liberty demands as its price many irrationalities of legalism, as we know all too well today when we read the practical immunities of these gangsters. This is, at least, partly the price which cannot be so easily disposed of. There is a fine line. There is a point where these people practically rule a city and then you no longer have guarantees of liberty and security. And then the problem comes up in a new way. Now, this he develops at considerable length here as well as in the following chapter. The point which he makes there is that in moderate states, especially in republics, there is respect for the life, honor, and property of each citizen. We see here the comfortable self-preservation that is somewhat more defined by the addition of honor. I wonder<sup>103</sup> [if], in Locke’s *Treatise on Civil Government*, there is any reference to the honor of the individual citizen? Life,

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<sup>xxv</sup> In original: “If we examine the set forms of justice with respect to the trouble the subject undergoes in recovering his property or in obtaining satisfaction for an injury or affront, we shall find them doubtless too numerous: but if we consider them in the relation they bear to the liberty and security of every individual, we shall often find them too few; and be convinced that the trouble, expense, delays, and even the very dangers of our judiciary proceedings are the price that each subject pays for his liberty.” *Spirit of Laws*, vol. I, bk. VI, ch. 2, 73–74.

liberty, and property, all the time, but I do not know it by heart and it would be of some interest to see if it is ever mentioned; it would throw some light on the difference between Locke and Montesquieu.

This discussion of the English jury system which follows in chapter 3 became the subject of a correspondence between Montesquieu and Hume, and Montesquieu made certain changes based on the points raised by Hume.

But the key point, which Montesquieu had not made sufficiently clear in the first place, is what the jury had to decide. Did it have to decide that the facts are proved or not proved? Or, did it have to decide guilty or innocent?<sup>104</sup> That makes all the difference in the world. It can simply be proved that this man wrote this article, but this doesn't prove that this article was libelous,<sup>105</sup> therefore the only guarantee would be that the jury decide, as it does decide, guilty or innocent and not the mere facts.

A very grave problem is cast in chapter 4, will you read the first paragraph.

**Mr. Reinken:** "Hence arises the different modes of passing judgment. In monarchies the judges choose the method of arbitration; they deliberate together, they communicate their sentiments for the sake of unanimity; they moderate their opinions, in order to render them conformable to those of others: and the lesser number are obliged to give way to the majority. But this is not agreeable to the nature of a republic."

**LS:** In other words, that you have agreement of judges, a uniform collective judgment.

**Mr. Reinken:** "At Rome, and in the cities of Greece, the judges never entered into a consultation; each gave his opinion in one of these three ways: I absolve, I condemn, It does not appear clear to me: this was because the people judged, or were supposed to judge. But the people are far from being civilians (like civil lawyers); all these restrictions and methods of arbitration are above their reach; they must have only one object and one single fact set before them; and then they have only to see whether they ought to condemn, to acquit, or to suspend their judgment."<sup>xxvi</sup>

**LS:**<sup>106</sup> This indicates<sup>107</sup> a question which we know from extra-judicial facts quite well. But here the tension between the people and their mind, on the one hand, and legal precision and subtlety on the other hand. This applies to all kinds<sup>108</sup> [of] expertise; no government without expertise—and the people are never experts—and how to reconcile these two elements is one of the great questions of politics in our age.<sup>109</sup>

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<sup>xxvi</sup> In original: "At Rome, and in the cities of Greece, the judges never entered into a consultation; each gave his opinion in one of these three ways: I absolve, I condemn, It does not appear clear to me: this was because the people judged, or were supposed to judge. But the people are far from being civilians (like civil lawyers); all these restrictions and methods of arbitration are above their reach; they must have only one object and one single fact set before them; and then they have only to see whether they ought to condemn, to acquit, or to suspend their judgment." *Spirit of Laws*, vol. I, bk. VI, ch. 4, 75–76.

The next chapter, which is the last we were supposed to discuss today, begins with the word Machiavelli and he is called by Montesquieu “that great man.” I believe that is the first time that Montesquieu calls anyone a great man.<sup>110</sup> He spoke of the great men of France, Germany, and England in the preface but he didn’t mention any names. If you keep this question in mind, at the end of the course we will have a complete list of men called by Montesquieu “great men.” You see Machiavelli is surely one of them.

Montesquieu criticizes Machiavelli regarding political justice. I mean justice in political crimes in the name of the security of the private man; for Machiavelli this was not an overriding consideration. Whether the criticism is fair, I leave entirely open.

He makes clear later that in a monarchy the prince must never judge, the king must never judge, i.e. there must be an independent judiciary. In despotic states the prince may judge himself; naturally, because he is omnipotent and omni-competent. But if we raise the question, what about republics where the sovereign is the people, we do not get a simple answer from Montesquieu. He will discuss it later on when he discusses the separation of powers in Rome, in Book XI and to some extent in Book XII<sup>111</sup>.

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<sup>1</sup> Deleted “Now.”

<sup>2</sup> Deleted “that.”

<sup>3</sup> Deleted “say.”

<sup>4</sup> Deleted “the.”

<sup>5</sup> Deleted “And I think.”

<sup>6</sup> Deleted “the fifth book.”

<sup>7</sup> Changed from “Now there is here.”

<sup>8</sup> Deleted “and.”

<sup>9</sup> Deleted “I.e.”

<sup>10</sup> Deleted “not.”

<sup>11</sup> Deleted ““if.””

<sup>12</sup> Deleted “of course.”

<sup>13</sup> Deleted “of course.”

<sup>14</sup> Deleted “happiness.”

<sup>15</sup> Deleted “So, in other words.”

<sup>16</sup> Deleted “one can say.”

<sup>17</sup> Deleted “Sure.”

<sup>18</sup> Changed from “Later on in this chapter it is made clear.”

<sup>19</sup> Deleted “That is in the middle of this chapter.”

<sup>20</sup> Deleted “Now.”

<sup>21</sup> Moved “and.”

<sup>22</sup> Deleted “And.”

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- <sup>23</sup> Deleted "Now."
- <sup>24</sup> Deleted "turn."
- <sup>25</sup> Deleted "the thing."
- <sup>26</sup> Deleted "that is only one big sign of the same thing. Well, don't laugh Mr. D., these are very serious matters."
- <sup>27</sup> Deleted "if we."
- <sup>28</sup> Deleted "as it were."
- <sup>29</sup> Deleted "but."
- <sup>30</sup> Deleted "of."
- <sup>31</sup> Deleted "no, no, no, no."
- <sup>32</sup> Deleted "This much about this point."
- <sup>33</sup> Deleted "I think."
- <sup>34</sup> Deleted "is."
- <sup>35</sup> Deleted "So."
- <sup>36</sup> Deleted "of course."
- <sup>37</sup> Deleted "But."
- <sup>38</sup> Deleted "And."
- <sup>39</sup> Deleted "And."
- <sup>40</sup> Deleted "LS: Is there one?"
- <sup>41</sup> Deleted "Now."
- <sup>42</sup> Deleted "of course."
- <sup>43</sup> Deleted "this."
- <sup>44</sup> Deleted "indeed."
- <sup>45</sup> Changed from "as he calls it."
- <sup>46</sup> Deleted "and so on which."
- <sup>47</sup> Deleted "Of course."
- <sup>48</sup> Deleted "of."
- <sup>49</sup> Deleted "as you well know, and."
- <sup>50</sup> Deleted "in a."
- <sup>51</sup> Changed from "to a primeval savage."
- <sup>52</sup> Deleted "You know."
- <sup>53</sup> Deleted "he."
- <sup>54</sup> Deleted "indeed."
- <sup>55</sup> Deleted "a pointer, there is no question."
- <sup>56</sup> Deleted "how."
- <sup>57</sup> Deleted "and."

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<sup>58</sup> Deleted "it is."

<sup>59</sup> Changed from "Oh, no, no, no.

Student: Here?

LS: Yes."

<sup>60</sup> Deleted "you see."

<sup>61</sup> Deleted "I mean."

<sup>62</sup> Deleted "Now."

<sup>63</sup> Deleted "namely, as."

<sup>64</sup> Deleted "Good, that is quite true."

<sup>65</sup> Deleted "But, still."

<sup>66</sup> Deleted "and that is."

<sup>67</sup> Deleted "And."

<sup>68</sup> Deleted "surely."

<sup>69</sup> Deleted "not."

<sup>70</sup> Deleted "is well."

<sup>71</sup> Deleted "Now."

<sup>72</sup> Deleted "of course."

<sup>73</sup> Deleted "And, therefore."

<sup>74</sup> Deleted "yes."

<sup>75</sup> Deleted "on."

<sup>76</sup> Deleted "how come."

<sup>77</sup> Deleted "of course."

<sup>78</sup> Deleted "now."

<sup>79</sup> Deleted "And that means that."

<sup>80</sup> Deleted "for you to say it occurred first in your assignment."

<sup>81</sup> Deleted "and freedom meaning."

<sup>82</sup> Deleted "and."

<sup>83</sup> Deleted "of which he spoke."

<sup>84</sup> Deleted "i.e."

<sup>85</sup> Deleted "have not."

<sup>86</sup> Deleted "of course."

<sup>87</sup> Deleted "despotic."

<sup>88</sup> Deleted "LS: Yes, go on."

<sup>89</sup> Deleted "of."

<sup>90</sup> Deleted "Yes, we can leave it at that."

<sup>91</sup> Deleted "that is."

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<sup>92</sup> Deleted "Yes, now."

<sup>93</sup> Deleted "Yes."

<sup>94</sup> Deleted "You know."

<sup>95</sup> Deleted "a."

<sup>96</sup> Deleted "'In the....'"

<sup>97</sup> Deleted "And also."

<sup>98</sup> Deleted "of."

<sup>99</sup> Deleted "You see."

<sup>100</sup> Deleted "And."

<sup>101</sup> Deleted "and."

<sup>102</sup> Deleted "of course."

<sup>103</sup> Deleted "whether."

<sup>104</sup> Deleted "And, of course."

<sup>105</sup> Deleted "and."

<sup>106</sup> Deleted "Now."

<sup>107</sup> Deleted "of course."

<sup>108</sup> Deleted "or."

<sup>109</sup> Deleted "In."

<sup>110</sup> Deleted "Or, am I mistaken?"

<sup>111</sup> Deleted "as we shall see. So, we leave it at that then and turn next time to Mr. S. who will read his paper."

**Session 6: January 20, 1966**

[The session tape opens with Mr. Strauss continuing his remarks about the student's presentation.]

**Leo Strauss:** The reflection with which you closed your paper is<sup>1</sup> very sound but let us look a bit more closely into that. Does he ever say that the modern states, say, France or England, are wealthier than say imperial Rome? But you got this impression obviously from the way you spoke.

**Student:** When he discusses imperial Rome, he always compares it with the ancient republic.

**LS:** Yes, but this is not relevant to our question now.

**Student:** No.

**LS:** Well, at the beginning you spoke of three norms: virtue, comfortable self-preservation, and<sup>2</sup> the third I forgot—

**Student:** Liberty.

**LS:**<sup>3</sup> Oh, liberty. Yes, in general, one can say that these are the laws which have hitherto appeared. But how did you state the problem arising from this point? The problem is that the requirements of one are not necessarily compatible with those of the others. That is true. And therefore the question is what would he prefer in such a conflict? This is the way you stated the problem and that I think is true.

Now the point which you made early in your paper and again at the end is that the political considerations as such, i.e. those dealing with the differences of regimes, are not the only ones. And that especially the difference between ancients and moderns is of crucial importance. That is, without any question, true.<sup>4</sup> The question is, then, what is the difference between the ancients and the moderns? Did you not say at a certain point that the sense of shame seemed to be a peculiarly modern phenomenon?

**Student:** No, I said to monarchies.

**LS:** Oh, I see; in connection with honor. Yes, I see. That is true.

Now, one point you made also [is] that republics, and the example is of course Rome here, are not fit for empire. Well, the fact that there was a Roman empire confirms it because as soon as the Romans got an empire they had to become a monarchy and no longer have the republic.

**Student:** It was my impression from reading this that there could not be a frugal empire.

**LS:** Yes, this is the immediate context. The Romans were no longer able to live frugally.<sup>5</sup> Let us now draw another conclusion from that. The republic is not fit for empire; republics are possible only in fairly small societies, in city-states. But this creates a difficulty. All right, you have virtue and you despise the glitter of empires. But what is a serious difficulty for [a] republic<sup>6</sup> or<sup>7</sup> democracy? Where does the difficulty come in?

**Student:** In defending itself against other—

**LS:** Yes, defending itself. And what is the way out of this difficulty?

**Student:** Eventually federation.

**LS:** Federation, yes. That is the transition which comes in Books IX and X. You can see how this is worked into the whole fabric of the book in the following way: which are the modern republics known to Montesquieu?<sup>8</sup>

**Student:** Holland, Switzerland, [and] Venice.

**LS:** Venice, good.

**Student:** He qualifies his praise of the Italian city-states.

**LS:** Yes, but he had mentioned Venice and I think—did he hitherto mention Holland etc.?

**Student:** He mentioned Holland<sup>9</sup> at the beginning of Book VIII I think.

**LS:** Yes, Book VIII, but hitherto he has not mentioned Holland and Switzerland. Now what is common to Holland and Switzerland?

**Student:** . . . .

**LS:** You see how he prepares this. He is silent about it because he doesn't show his cards before he is ready<sup>10</sup>—even a thing which is not directly connected, not directly a dangerous subject—yes?

**Student:** He has made a reference to republics which masquerade as monarchies and I think we have also had already a reference to a system which is a despotism vis-à-vis the body which is governed, but the body which governs is a republic. And I think he applied that formula to Venice. Would it be just to say that he would have it applied to England too? As a republic of the gentry?

**LS:** Not quite. But surely he wouldn't say that England is a democracy; there was a House of Lords, to say nothing of the way people were elected to the House of Commons



at that time. But you must not use the plural “republics” masquerading as monarchies because he spoke only of the singular.

But this preparation of the issue of federalism, which comes up then in Books IX and X, the silent preparation, the surreptitious preparation, is one of the many peculiarities of this kind of writing which we find in Montesquieu.

There is another point which I would like to mention for one moment regarding the issue of the ancients and the moderns. Can you repeat the most striking differences as they appear hitherto?

**Student:**<sup>11</sup> The presence of virtue in ancient republics and the absence of virtue in modern states.

**LS:** Yes, that is the key point indeed for Montesquieu. And this<sup>12</sup> catches two birds with one stone by showing [an] alternative to the ancient republic, namely, England, a modern republic. He shows at the same time that virtue, in the strict sense, is dispensable. Is this clear? In other words, this enables him to suggest a certain criticism of the severe demands of traditional morality, philosophic or Biblical. Now this view that the ancients have a much higher moral standard than the moderns; immediately after Montesquieu, Rousseau . . . to the distinction between the ancients as citizens and the moderns—what term did [Rousseau]<sup>13</sup> use to show that the moderns are not citizens?

**Student:** Bourgeois.

**LS:** Bourgeois, that is the origin of the Marxist term. Because bourgeois is, in itself, a neutral term; it means simply burger, an inhabitant of a burg. But then it took on this meaning. And Hegel in his analysis of the bourgeois—now the bourgeois is not a citizen, why? He is not public spirited, of course, but how does it show?<sup>14</sup> He doesn’t defend his country. Who defended the country at that time?

**Student:** Mercenaries.

**LS:** Mercenaries, yes, the scum of the population, led by the gentry. So, he doesn’t fight. And Hegel expressed this with philosophical ruthlessness that the principle of the bourgeois is the fear of violent death, namely, carried to its conclusion: not ever exposing one’s dear life to any serious danger. And later on Marx brought it into his economic interpretation. But the fundamental distinction stems from Rousseau and is, in a way, implicit in Montesquieu already in what he says about the ancients and the moderns: the ancients speak of virtue all the time and the moderns of finance. And you see the complicated position of Marx. He had to say so much about finance and these things in order to restore on a global level, on a level hitherto unthinkable, the complete citizenship of every human being. I mean the complete dedication to the common good. This is what he means and what impressed Eisenhower so much in his famous conversation with General Zhukov, which I do not wish to quote because I do not remember it exactly. And the immediate occasion was, I believe, how to dispose of minefields—the American

approach and the Russian approach—and this interested Eisenhower very deeply. Mr. M. you seem to wish to say something.

**Student:** I'm not sure I see your point and the connection. To suggest when he speaks about luxury in modern monarchies and in the cities that the man, the citizen, the bourgeois is less visible, he is not noticed—well, this seems to amplify the point about citizen virtue. This is in connection with mass society.

**LS:** Yes, sure, within the limits<sup>15</sup> [in] which the problem of the mass society could be seen in 1748 or before—Paris or London, at that time. I do not remember the population of that time.

**Student:** They had three-day traffic jams in the French regency, so Montesquieu would have known it then.

**LS:** No, now in simple numbers, three hundred thousand in Paris?

**Student:** Well, no more than five hundred thousand.

**LS:** Well, I do not know so it is only a guess.

Now let us turn to Book VI, chapter 6<sup>16</sup>. The subject with which he deals here is [that] in a monarchy there must be a clear distinction between the administration and the government and the jurisdiction, which foreshadows the whole problem of the separation of the powers. Now in a note in this edition, the best edition now available, the editor says, with a view to the whole discussion: Montesquieu has not expressed his thought in a very clear form, for he wishes to spare the established government. You must have observed on many occasions that there is a kind of deliberate vagueness,<sup>17</sup> [but] with a little bit of thinking you can transform the vagueness into precision. And the reason is this.

Now let us turn to chapter 8, the second paragraph. This chapter deals with accusations in the different governments.

**Mr. Reinken:** “We have at present an admirable law, namely, that by which the prince, who is established for the execution of the laws, appoints an officer in each court of judicature to prosecute all sorts of crimes in his name; hence the profession of informers is a thing unknown to us, for if this public avenger were suspected to abuse his office, he would soon be obliged to mention his author.”<sup>i</sup>

**LS:** There is no such praise as, “we have here an admirable law,” of the corresponding republican institutions—<sup>18</sup> what was the corresponding republican institutions as described by Montesquieu? I mean, who fills the place of the public prosecutor?

**Student:** The informer.

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 8, 80–81.

**LS:** Yes. According to the legal formula in Athens, everyone who wishes. And this led in practice to the sycophants, the informers. In a scene in a comedy, the sycophant in a way introduces himself by saying, “I am the man with . . . I am the informer.”<sup>ii</sup> And this, of course, had very great effects and this is, I believe, generally now the situation.

Let us turn now to the next chapter and the first four paragraphs.

**Mr. Reinken:** “The severity of punishments is fitter for despotic governments, whose principle is terror, than for a monarchy or a republic, whose springs are honor and virtue.”<sup>iii</sup>

“In moderate governments, the love of one’s country, shame, and the fear of blame are restraining motives, capable of preventing a multitude of crimes. Here the greatest punishment of a bad action is conviction. The civil laws have therefore a softer way of correcting, and do not require so much force and severity.”

**LS:** Skip the next two paragraphs.

**Mr. Reinken:** “It would be an easy matter to prove that in all, or almost all, the governments of Europe, penalties have increased or diminished in proportion as those governments favored or discouraged liberty.

**LS:** How could he state this in a simple formula, this relation which he asserts to exist?<sup>19</sup> The more liberty, the more gentleness, and I think that that is still the general view<sup>20</sup> prevailing in the world.<sup>21</sup>

**Mr. Reinken:** “In despotic governments, people are so unhappy as to have a greater dread of death than regret for the loss of life; consequently their punishments ought to be more severe. In moderate states they are more afraid of losing their lives than apprehensive of the pain of dying—”

**LS:** “Of death in itself.”

**Mr. Reinken:** “—those punishments, therefore, which deprive them simply of life are sufficient.”<sup>iv</sup>

**LS:** He asks us here<sup>22</sup> to make a distinction between fear of death and loving life. There are quite a few people who do not love life and yet recoil from death. This distinction makes sense. Now under the despotic governments, the fear of death is more powerful than the attractiveness [and] the sweetness of living as living because living under despotism is so miserable but still people have this natural revulsion for death. But, still,

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<sup>ii</sup> Aristophanes, *Birds*, 1422-23. Edition Unknown.

<sup>iii</sup> In original: “The severity of punishments is fitter for despotic governments, whose principle is terror, than for a monarchy or a republic, whose spring is honor and virtue.”

<sup>iv</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 9, 81.

why must it follow that you must have more severe punishments in despotism, since the fear of death?

Presumably, to keep this fear of death alive and to dramatize it. If one went in the other direction and simply tried to execute the death penalty in the most humane manner, then<sup>23</sup> you would be weakening the punishment almost to the vanishing point. If you take precautions to make death not painful, you have taken away the only thing people fear; so, what you want to do is to make death very dramatically painful and keep the fear alive.

You have some doubts?

**Student:** Yes, it seems to me that if Montesquieu wants to distinguish between the love of the sweetness of life and the dread of death, the distinction in punishments shouldn't be as is stated, but death as opposed to life imprisonment; because life imprisonment would deprive one of the sweetness of time, as generally understood. You would no longer have liberty to do those things that would make life sweet.

**LS:** Montesquieu simply took it for granted that *the* punishment, the most severe punishment, is capital punishment<sup>24</sup>. Now the question is, should this capital punishment be simple capital punishment or should it have some frills? There are various means of protraction which people have found out and which some have restored in our blessed century in quite a few places on the globe, as you know.

Perhaps the next paragraph may be of some help.

**Mr. Reinken:** "Men in excess of happiness or misery are equally inclinable to severity; witness conquerors and monks."<sup>v</sup>

**LS:**<sup>25</sup> What does this mean! Which of the two is extremely happy and which of the two is extremely miserable? One would expect from the paragraph that the extremely happy people are the monks, because they were mentioned first, and the extremely unhappy people [are] the conquerors. Now this is obviously a very ironical passage in which Montesquieu accepts, at least partly, common<sup>26</sup> [and] vulgar notions. And the conqueror would obviously be the most happy and from this it would follow that the monks are the most unhappy ones. Does this agree with anything we have read before? That the monks are the unhappy people?

**Student:** Well, the monks are denied all—

**LS:** And therefore their love for their rule, which forbids them.<sup>27</sup> And both, to get back to the context, those who are miserable and those who are happy are hard; the ones because they don't expect to fall into the kind of troubles and the others because they are already so deep in it they fear nothing.

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<sup>v</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 9, 82.

That reflection, incidentally, you also find in Aristotle's *Rhetoric* when he speaks about which people are fearful and compassionate and which [are] not. Yes.

**Student:** In the earlier passage, he said that the monks were happy with their rule because that was the only thing left and that doesn't seem compatible with this<sup>28</sup>.

**LS:** But could one not take two views of happiness? First, whether people say, or even believe, that they are happy. And, whether they are "objectively" happy, or unhappy for that matter. But the monks could very well be happy subjectively with their rule, and could still be objectively unhappy. This distinction would have to be applied.

The next paragraph.

**Mr. Reinken:** "What we see practiced by individuals is equally observable in regard to nations. In countries inhabited by savages who lead a very hard life, and in despotic governments, where there is only one person on whom fortune lavishes her favors, while the miserable subjects lie exposed to her insults, people are equally cruel. Lenity reigns in moderate governments."<sup>vi</sup>

**LS:** This example of the savage people, and that means by implication people not ruled despotically are in the same boat as people ruled despotically,<sup>29</sup> which we know already from before, the difference of the regimes does not explain all phenomena. In the case of the conduct of the [inaudible words] is not to be understood in terms of the regimes in which they live but in terms of the conditions. The fact that they have to lead a harsh life, for example.

Next point.

**Mr. Reinken:** "When in reading history we observe the cruelty of the sultans in administration of justice, we shudder at the very thought of the miseries of human nature."<sup>vii</sup>

**LS:** No, literally, "we feel with a kind of pain the evils of human nature." That is a very restrained phrase. What does he mean by that?<sup>30</sup> When we read in the histories the atrocious justice practiced by the sultans we feel with a kind of pain the evils of human nature. Now what would be the alternative which you are confronted with [in] cases of atrocious cruelty?

**Student:** Merely be shocked at the evils of some sorts of people.

**LS:** No, I mean, first of all, what is the passion that is aroused when we hear such terrible stories?

**Student:** Anger.

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<sup>vi</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 9, 82.

<sup>vii</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 9, 82.

**LS:** Compassion.

**Student:** Indignation.

**LS:** Indignation! Montesquieu does not react here with indignation; he feels pain. Why?

**Student:** Well, isn't he feeling pain with the thought that man, the human race of which he is a part, is capable of such evil.

**LS:** Yes, that is true, but, still, he does not go on toward indignation. That is not uninteresting. Why should this be?

**Student:** I think that this is connected with a view of human nature which regards these evils as part of human nature rather than unnatural. Therefore, you are inclined to pity people who happen to have been born with this nature.

**LS:** Yes, I think that is in the right direction. Perhaps you can state it a bit more precisely:<sup>31</sup> In a way this is a necessity, and we are not indignant about necessities. Given these conditions, despotic government is inevitable, and despotic government, naturally and necessarily, shows itself in these kinds of actions.

Let us read the next paragraph.

**Mr. Reinken:** "In moderate governments, a good legislator may make use of everything by way of punishment."

**LS:** In other words, he doesn't have to go to extreme things like torture and so on.

**Mr. Reinken:** "Is it not very extraordinary that one of the chief penalties at Sparta was to deprive a person of the power of lending out his wife, or of receiving the wife of another man, and to oblige him to have no company at home but virgins?"

**LS:** He means spinsters. You can read this in Xenophon's *Constitution of Sparta*, chapter 9, section 5. By changing spinsters to virgins he makes it even still worse, this great punishment to be surrounded by virgins! Now go on.

**Mr. Reinken:** "In short, whatever the law calls a punishment is such effectively."<sup>viii</sup>

**LS:** It should be read in a different way: "Whatever the law *calls* punishment is *in fact* punishment." Now here is<sup>32</sup> a distinction involved which some of you have studied in ancient books and know quite well: the distinction between nature and convention. The law, the convention calls something a punishment—this is not in anyway a punishment, that is the implication—but by being called a punishment, it becomes in fact a punishment,<sup>33</sup> if the law does this. So, in moderate governments we may<sup>34</sup> say the *nomos*

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<sup>viii</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 9, 82.

has a greater importance than nature. This is a provisional and tentative suggestion and we must see if that makes sense. *Nomos* is a civilizing thing compared with nature. Whether he means that depends on whether it will be confirmed by the sequel. Now let us read the next chapter. But first you want to say something?

**Student:** It seems to me this punishment, one could not have children, isn't that what he is possibly driving at?

**LS:**<sup>35</sup> No, that is not the point. You think that it means that?<sup>36</sup> No, this would be a genuine punishment. But the other is a punishment because it is viewed by the community in this light.

Now let us read the next chapter.

**Mr. Reinken:** "In the ancient French laws we find the true spirit of monarchy. In cases relating to pecuniary mulcts, the common people are less severely punished than the nobility. But in criminal cases it is quite the reverse; the nobleman loses his honor and his voice in court, while the peasant, who has no honor to lose, undergoes a corporal punishment."<sup>ix</sup>

Does this not mean that bodily punishment is a greater evil than the loss of honor?

**LS:** No<sup>37</sup>, to those who value honor, honor is a greater loss.

**Student:** No, he says that corporal punishment is greater.

**LS:** Objectively, but not relatively.

**Student:** How would you explain that?

**LS:** In the case of pecuniary penalties, the non-nobles are less punished than the nobles and it is the contrary as regards crimes. So that, as regards crimes, the non-nobles are punished more.

This does not settle it, come to think of it. Has anyone else an opinion regarding this matter? Yes.

**Student:** Well, the fact that he says in the criminal cases it is the reverse does seem to imply that in that case the peasant is more harshly punished.

**LS:** That is true. Now, bodily punishment is greater than loss of honor. This makes sense, especially if honor is understood in the sense of point of honor, you know *point d'honneur* with its vagaries. Hobbes' *Leviathan*, chapter 27, makes a distinction between corporeal hurt and fantastical hurt. That fantastical hurt is precisely that which Montesquieu means here. Hobbes<sup>38</sup> uses a wide sense: If someone called you names, if

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 10, 82.

you are a sensible man, that does not hurt you—that is a fantastical hurt. But if someone hits you,<sup>39</sup> beats you, or kills you, that is a genuine hurt—a corporeal hurt. That is of some importance regarding the question of naturalness. Yes.

**Student:** Well, this isn't characteristically modern thought because that came from Aristotle's *Ethics* also.

**LS:**<sup>40</sup> Who said that this is characteristically modern?

**Student:** What I meant was that Montesquieu and Hobbes are not the only two representatives.

**LS:** Sure, that Hobbes said that pains or pleasures of mere opinion are not comparable with solid pains like a toothache didn't require any modern sophistication. That goes without saying. But there is a certain "X" which distinguishes Hobbes from those occurring in any ancient author. There is some difference, but not on this matter.

Chapter 11, let us read the beginning.

**Mr. Reinken:** "The people of Rome had some share of probity—"

**LS:** Oh, no! "Had probity."

**Mr. Reinken:** "Such was the force of this probity that the legislator has frequently no further occasion than to point out the right road, and they were sure to follow it; one would imagine that instead of ordinances it was sufficient to give them counsels."<sup>x</sup>

"The punishments of the regal laws, and those of the Twelve Tables, were almost all abolished in the time of the republic, in consequence either of the Valerian or of the Porcian Law. It was never observed that this step did any manner of prejudice to the civil administration.

"This Valerian law, which restrained the magistrates from using violent methods against a citizen that had appealed to the people, inflicted no other punishment on the person who infringed it than that of being reputed a dishonest man."<sup>xi</sup>

**LS:** So, only laws of honor<sup>41</sup> [and] reputation, and no other thing. If we exaggerate a bit we can say: where there is virtue, at the beginning, few punishments are required. When there is complete self-denial, no punishments<sup>42</sup> are needed. Self-denial means<sup>43</sup> overcoming of the nature. Let us state it in this way: complete liberation of nature, complete overcoming of nature, indeed denaturalization. This is a point on which we touched last time and I referred to Rousseau. I have looked up Rousseau in the meantime,

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<sup>x</sup> In original: "Such was the force of this probity that the legislator had frequently no further occasion than to point out the right road, and they were sure to follow it; one would imagine that instead of precepts it was sufficient to give them counsels."

<sup>xi</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 11, 82–83.



in *Social Contract*, Book II, chapter 7, occurs the passage which I have in mind. It is the chapter on the legislator:

“He who dares to undertake to establish a people must regard himself as able, so to speak, to change human nature; to transform each individual, who, by himself, is a complete and solitary whole into a part of greater whole from which this individual is to receive in a manner his life and his being. To alter the constitution of man in order to strengthen it; to substitute a partial and moral existence to the physical and independent existence which we all have received from nature. It is necessary, in other words, that he take away from man his own forces in order to give him forces which are alien to him and which he could not use without the help of others. The more these natural forces are dead and annihilated, the more the acquired forces (the social forces) are great and durable, the more the institution of government is solid and perfect.”<sup>xii</sup>

Now this is the passage which I had in mind. A complete change from natural man into social man: from a being who is primarily concerned with his own welfare into a being who is primarily concerned with the public good. That is the point. And something of this kind is already noticeable in Montesquieu, although Montesquieu would have abhorred these extreme and horrible formulations. The severest critic of this view is Burke and what Burke said against the French revolution: what they were doing, their experimenting with men,<sup>44</sup> [and the] radical transformation<sup>45</sup> [are] of very great importance for the things with which we are confronted today—a complete change of a man from a not collectivist being into a collectivist being, that is the problem here.

**Student:** I was wondering, Mr. Strauss, if there is some parallel between Montesquieu and Rousseau’s attempt to create the artificial wholeness. Rousseau wants to create an artificial wholeness and somehow imitate them, the natural way. If there was some parallel in Montesquieu, I didn’t see it—between the natural right principle and self-denial.

**LS:** [LS goes to the board] We have read the chapter on the natural rights and we have only the basic needs which all men possess equally and so on. And this is not a completed man. Then he made<sup>46</sup> a leap in order to pose the problem, and he spoke of republics, especially democracies. And the principle of democracy<sup>47</sup> is virtue. The connection between virtue and these poor things was wholly obscured. We have to figure it out. The very fact of that leap is a most important proof, from any individual passage which I might be able to quote, of what I said. Since this is human nature, strictly understood, which means that these [are] altogether<sup>48</sup> selfish. And here [referring to democracy] men are supposed to be utterly unselfish—remember the strong formulations when he spoke of virtue. There must be a complete change in his nature—exactly that of which Rousseau is speaking in that chapter. Yes.

**Student:** I had a recent reminder of that problem:<sup>49</sup> the despotisms with the savages that don’t have government<sup>50</sup> is a reminder that these natural urges and [the] fear of not satisfying [them], the despotisms are—

<sup>xii</sup> Jean-Jacques Rousseau, *Social Contract*. Edition unknown.

**LS:** Yes, we discussed this last time. Wasn't it Mr. G. that suggested that despotism is the most natural regime, closest to nature, namely to uncultivated, untransformed nature.<sup>51</sup>

What would Aristotle and similar minded people say to Montesquieu or to us when we speak this?

**Student:** Well, I can answer the question in a round-about way. In the description of the laws of nature, in chapter 2, the fourth one is the entrance into society.<sup>52</sup> For Montesquieu it is not as radical a transformation as for Rousseau and, in a way, that would be Aristotle's—

**LS:** Yes, but this is slightly too subtle for our present purposes. Let us make it crystal clear.

**Student:** Man's nature is not eating and such things, but thinking.

**LS:** Well, why don't you state it in his terms?

**Student:** Man is a social being.

**LS:** Why don't you use Montesquieu's terms? Virtue is, in a deeper sense, man's nature than the desire for food; because only by being virtuous does man become truly man. Therefore, for Aristotle or similarly minded men the cultivation of man out of a savage into a highly civilized being is not a transformation of his nature but his nature coming into its own—the maturation of man rather than his transformation. But if one rejects this Aristotelian notion, as most social scientists and others do today, then one is somehow driven into this difficulty, of which the passage in Rousseau is perhaps the most powerful expression. Yes.

**Student:** Where is that in Rousseau?

**LS:** Book II, chapter 7, on the legislator.

**Student:** The difference between what Aristotle sees him naturally cultivated into and what Rousseau and Montesquieu see him artificially cultivated into is crucial, if I am thinking correctly. In other words, they want to—

**LS:** No, the fact is that there is no such great difference. I mean, that virtue in any severe sense is very rare in human beings, all sensible observers have always agreed, just as extreme viciousness is very rare. And that there are institutions which favor virtue and institutions which favor viciousness is also data which no one in his senses would question. So, the issue is simply the status of virtue. Is virtue, as it were, something to be grafted on a wholly alien nature? Or is virtue the fruit of that nature? There was always this difference which was always understood. Virtue doesn't come about in the same way

as a flower or<sup>53</sup> [the] fruit of a tree comes about. Virtue needs man's conscious activity—education, as we say.

**Student:** The reason I said that is that there is a strand in Montesquieu that man is more self-seeking in modern times.

**LS:** But this is another matter. This is a very different question, but surely an important question. Whether men are more or less virtuous in ancient and in modern times is itself independent of that theoretical issue which we have now discussed.<sup>54</sup>

Let us assume that there is a connection between men's actual conduct and the theories which they hold. Then one would say, no wonder that the ancients were more decent because they believed in the naturalness of virtue; no wonder that the moderns are degenerate, because they do not regard virtue as man's natural perfection. But what would be the objection to this immediately, at once, on the basis of what we have read of Montesquieu? Does Montesquieu believe in the naturalness of virtue?

**Student:** No.

**LS:** So, in other words, he accepts the degeneracy of the moderns. In fact, he does, as will become clear later; but not in that crude way in which I stated it. He will accept the principle of private vice and public benefit to a certain extent, as we shall see later.

The next chapter deals with the power<sup>55</sup> [and] effectiveness of pains. The key point which he makes in chapter 12 is in the fourth paragraph.

**Mr. Reinken:** "Mankind must not be governed with too much severity; we ought to make a prudent use of the means which nature has given us to conduct them. If we inquire into the cause of all human corruptions, we shall find that they proceed from the impunity of criminals, and not from the moderation of punishments."

**LS:** The thought is clear. The impunity of crimes makes crimes abound, not the fact that punishments are moderate. Yes.

**Mr. Reinken:** "Let us follow nature, who has given shame to man for his scourge; and let the heaviest part of the punishment be the infamy attending it.

"But if there be some countries where shame is not a consequence of punishment, this must be owing to tyranny, which has inflicted the same penalties on villains and honest men."<sup>xiii</sup>

**LS:** Yes, now this is a very interesting point. Shame is by nature a punishment, more so than anything else. This is very remarkable. Why could shame be a natural punishment?

**Student:** Wouldn't man have to be naturally susceptible to the opinions of his fellows?

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 12, 84.

**LS:** Yes. Did you want to say something?

**Student:** I was thinking that this is the old view of nature in Montesquieu; it is virtuous to feel shame.

**LS:** Yes, in a way, that is a point. There is something of that and I will try to lead up to this point. One could perhaps also say that there are things that are by nature respectable and there are other things which are by nature disreputable. These are things developed by Aristotle at some length in his *Rhetoric* and are still intelligible but open to certain difficulties based on anthropological and other evidence. Now let us read the paragraph after next.

**Mr. Reinken:** “It often happens that a legislator, desirous of remedying an abuse, thinks of nothing else; his eyes are open only to this object, and shut to its inconveniences. When the abuse is redressed, you see only the severity of the legislator; yet there remains an evil in the state that has sprung from this severity; the minds of the people are corrupted, and become habituated to despotism.”<sup>xiv</sup>

**LS:** So, despotism, in a natural way, corrupts these things. We have seen last time, where it was indicated by a false translation but not a misleading translation—when the translator spoke of man’s natural desire for liberty where Montesquieu only spoke of man’s love of liberty. What I am driving at is this: There is a certain normative conception of nature which is also virtue here. Now how they are reconciled [and] how these two different conceptions of nature are reconciled is a question which we are not yet able to answer.

The tendency of Montesquieu is, of course, quite clear<sup>56</sup>—liberty and gentleness. He is very far from being soft-hearted or soft-headed, but there is no question that this is his intention.

Let us turn to the next chapter: the powerlessness of the Japanese laws.

**Mr. Reinken:** “Excessive punishments may even corrupt a despotic government—”

**LS:** This is a justification of Mr. G.’s assertion<sup>57</sup> last time that there can be a perfection of each regime; because if there can be an imperfection of corruption, there can be a perfection. How helpful that is, is, of course, another matter.

Now the next paragraph.

**Mr. Reinken:** “Here almost all crimes are punished with death, because disobedience to so great an emperor as that of Japan is reckoned an enormous crime. The question is not so much to correct the delinquent as to vindicate the authority of the prince. These notions are derived from servitude—”

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<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 12, 84.

**LS:** Yes, “to avenge the prince.”

**Mr. Reinken:** “—These notions are derived from servitude, and are owing especially to this, that as the emperor is universal proprietor, almost all crimes are directly against his interests.”<sup>xv</sup>

**LS:** Let us stop here. In Japan, all crimes are capitally punished and the reason is because one doesn’t punish the crime as crime, but one punishes the act of disobedience of majesty. Now when I read this, I thought that he means more than Japan by this remark. And, indeed, I found a note in Montesquieu’s own handwriting to this effect. The Japanese make the same reasoning regarding the emperor which we make in regard to God. The fault, the sin, [and] the crime is infinite which offends an infinite being. Generally speaking, Montesquieu’s criticism of despotism means more than despotism strictly understood, say the kind of government he found in Russia,<sup>58</sup> China,<sup>59</sup> old Persia, and so on. He also has in mind the notions—the modern theological notions underlying the Bible. And we have seen some reference, where he spoke of the papal government as a despotic government which is one of the points where it came somewhat to the surface.<sup>60</sup>

Let us read the next paragraph.

**Mr. Reinken:** “They punish with death lies spoken before the magistrate; a proceeding contrary to natural defence.”<sup>xvi</sup>

**LS:** That is very important because he could also have said, “a thing contrary to natural right.” The natural defense means something to which we are, by nature, entitled. That is not an explicit, but an almost explicit reference to a natural right—one of the several which are so very rare.

In other words, every man has a right to defend himself. And a law forbidding that is absurd. And therefore it follows that also this somewhat relative thing, namely, if he would say something which would lead to his execution, you cannot expect him reasonably to say that. Hence, the benefit that he may not be a witness against himself.

Now let us turn a little bit later in the chapter when he says, “A sage legislator—”

**Mr. Reinken:** “A sage legislator would have endeavored to reclaim people by a just temperature of punishments and rewards; by maxims of philosophy, morality, and religion, adapted to those characters; by a proper application of the rules of honor, and by the enjoyment of ease and tranquility of life. And should he have entertained any apprehension that their minds, being inured to the cruelty of punishments, would no longer be restrained by those of a milder nature, he would have conducted himself in another manner, and gained his point by degrees; in particular cases that admitted of any

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 13, 86.

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 13, 85.

indulgence, he would have mitigated the punishment, till he should have been able to extend this mitigation to all cases.”<sup>xvii</sup>

**LS:** This manner, he says, would be unnoticeable [and] insensible. So, the wise procedure regarding punishment is clear: not to punish more harshly than is necessary. And there is also a wise procedure regarding the change from un-wisdom to wisdom: this must be a prudent<sup>61</sup> [and] gradual change—punish leniently in cases where leniency is particularly required and will be intelligible to others, but, otherwise, follow the harsh old law only until you have accustomed people to more lenient treatment of criminals.

[Read] the point which he makes in the sequel regarding a little bit of Japanese history, at the end of this chapter.

**Mr. Reinken:** “I shall here give one instance more from the same nation. The Emperor having abandoned himself to infamous pleasures, lived unmarried, and was consequently in danger of dying without issue. The Deyro sent him two beautiful damsels; one he married out of respect, but would not meddle with her. His nurse caused the finest women of the empire to be sent for, but all to no purpose. At length, an armorer’s daughter having pleased his fancy, he determined to espouse her, and had a son. The ladies belonging to the court, enraged to see a person of such mean extraction preferred to themselves, stifled the child. The crime was concealed from the Emperor; for he would have deluged the land with blood. The excessive severity of the laws hinders, therefore, their execution: when the punishment surpasses all measure, they are frequently obliged to prefer impunity to it.”<sup>xviii</sup>

**LS:** Yes, there is something which he has in mind that is connected with the thought which went before. There is something unnatural in this cruelty, and that is shown by the fact that nature itself takes its revenge. These punishments can no longer be executed even in such an extremely despotic regime as<sup>62</sup> Japan. That is the point. Of course, the fact that despotism is so cruel does not destroy despotism. There are much too powerful reasons supporting despotism in these climates, but it destroys only the extreme corruption of despotism. And of that corruption, he is speaking here.

At the beginning of chapter 15 he speaks of the Romans, this great people, *le grand peuple*. He had spoken of Machiavelli as a great man, as we have seen last time. I wonder if he quotes any other people as a great people; let us watch these little things. Because if we know the preferences of a man, we know that man better than if we know his birthplace and the dowry of his grandmother and so on. Yes?

**Student:** I just wanted to ask a question about the last point you made. Something doesn’t seem to reach through when he says that, “the crime was concealed from the Emperor; for he would have deluged the land with blood.” [Next sentence inaudible] So, the point of the story doesn’t seem to be the same as the story itself.

<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 13, 86.

<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 13, 86–87.

**LS:** But, still, is he not, according to the whole notion, supposed to execute justice?

**Student:** Yes, but they conceal the crime from him<sup>63</sup> not for the reason Montesquieu gives.

**LS:** No, you're assuming that it was the criminals that concealed the crime. Concubine No. 7 stifles the child, Lord-Chamberlain says, "This is dreadful! If I turn you in, the confusion will be too much, so go and sin no more."

**Student:** Yes, I think that this makes sense.

**LS:** Now let us turn to chapter 15, the third paragraph when he speaks of the Decemvirs.

**Mr. Reinken:** "The design of the Decemvirs appears more conspicuous in the capital punishment pronounced against libellers and poets."

**LS:** Now the Decemvirs were appointed by the Republic to lay down the laws, and they used the power to establish something like a tyranny. And what shows that they were on the way to a despotism is that they pronounced capital punishment against the authors of libels and the poets. Yes.

**Mr. Reinken:** "This is not agreeable to the genius of a republic, where the people like to see the great men humbled. But persons who aimed at the subversion of liberty were afraid of writings that might revive its spirit."<sup>xix</sup>

**LS:** Freedom of speech belongs to republics, that is clear. But, has this anything to do with natural right? That is a question which we cannot yet answer. We know only a few things regarding penal law and where natural law enters. For example, no one must be compelled to be [a] witness against himself. But freedom of speech in matters which have nothing to do with a man's crimes, that is by no means certain. He gives a very strange reason why freedom of speech, in the sense defined, is in agreement with genius of the republic. What does he say? "The people love to see the great ones humbled." Is this a virtuous motivation, we must ask.

Let us read a little bit later—

**Mr. Reinken:** "But if to the lenity of penal laws we add the right which the party accused had of withdrawing before judgment was pronounced, we shall find that the Romans followed the spirit which I have observed to be natural to a republic."<sup>xx</sup>

**LS:** "Natural to republic," he does not speak here of natural right, as you see.

The next chapter has the title of "Of the just Proportion between Punishments and Crimes." "Just Proportion," and that means, not a proportion established by a given law

<sup>xix</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 15, 88.

<sup>xx</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 15, 88.

in this or that country; on the contrary, Montesquieu wants to tell legislators what kinds of laws regarding punishment<sup>64</sup> they should establish. What is the standard which he has?<sup>65</sup> Let us read the first paragraph.

**Mr. Reinken:** “It is an essential point, that there should be a certain proportion in punishments, because it is essential that a great crime should be avoided rather than a smaller, and that which is more pernicious to society rather than that which is less.”

**LS:** In other words, the advantage to society seems to be the chief consideration, and<sup>66</sup> [by extension] the damage done to members of the society. Killing a man is a greater harm than stealing something from him and so on. So, that is all he would need; he wouldn’t need any natural law of another kind for establishing the right kind of punishment. But there are crimes that are still punishable, and which were surely punishable in former times, to which it wouldn’t apply. Think of certain kinds of sex, for example, disorders, of which one could obviously say, they do not affect society at large but only the individuals. We must see whether this is Montesquieu’s meaning.

A little bit later in the fifth paragraph of this chapter.<sup>67</sup>

**Mr. Reinken:** “It is a great abuse amongst us to condemn to the same punishment a person that only robs on the highway and another who robs and murders. Surely, for the public security, some difference should be made in the punishment.”<sup>xxi</sup>

**LS:** Public security is the criterion clearly stated.<sup>68</sup> This public security means the security of the public, that is to say, the security of all individuals indiscriminately. So, it would come down to that. Whether this identity of the public with all individuals applies in all cases, we cannot yet say. That is the last point.

Let us turn to the next chapter and read the first paragraph .

**Mr. Reinken:** “The wickedness of mankind makes it necessary for the law to suppose them better than they really are.”

**LS:** Let us say this more literally. “Because men are evil, the law is obliged to suppose them better than they are.” Because men are evil is the premise. In other words, he takes away the chief weapon of the anti-liberals that men are evil and therefore they must be punished severely. He says, because they are evil, they must be punished gently—because otherwise they would become more evil still. The punishment would be an education.

**Mr. Reinken:** “Hence the deposition of two witnesses is sufficient in the punishment of all crimes.”

**LS:** Why is this an assumption that they are good?

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<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 16, 90.



**Student:** Trusting two men.

**LS:** Well, the two may be liars.

**Student:** Assuming that the two are not going to collaborate.

**LS:** Yes, good.

**Mr. Reinken:** “The law believes them, as if they spoke by the mouth of truth. Thus we judge that every child conceived in wedlock is legitimate; the law having a confidence in the mother, as if she were chastity itself. But the use of the rack against criminals cannot be defended on a like plea of necessity.

“We have before us the example of a nation blessed with an excellent civil government.”

**LS:** No, I think, “very well policed,” say, highly civilized.

**Mr. Reinken:** “—where without any inconvenience the practice of racking criminals is rejected. It is not, therefore, in its own nature necessary.”<sup>xxii</sup>

**LS:** “It is therefore not by its nature necessary.”<sup>69</sup> Here you see nature again as a standard. But here we see also some other points, if we look at the two examples, especially the second one. We see the crucial importance for all law of legal fictions. We have to draw a line somewhere and make assumptions, which are by no means necessary in themselves, but without which there would be complete disorder.

Now if this is so, if we must—the reason Montesquieu gives is that we must make legal fictions in order to make men better. But these legal fictions are an essential part of the law and qua fictions they cannot be natural, in spite of their necessity. That is a problem for natural law.<sup>70</sup> At the end of this paragraph he has made the point which he wanted to make, that torture is not demanded by nature. Let us read the end of the paragraph.

**Mr. Reinken:** “So many men of learning and genius have written against the custom of torturing criminals, that after them I dare not presume to meddle with the subject. I was going to say that it might suit despotic states, where whatever inspires fear is the fittest spring of government. I was going to say that the slaves among the Greeks and Romans—”

**LS:** That is their torture.

**Mr. Reinken:** “—but I hear the voice of nature cry out against me.”<sup>xxiii</sup>

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<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. VI, ch. 17, 91.

<sup>xxiii</sup> In original: “I was going to say that the slaves among the Greeks and Romans—but nature cries out aloud, and asserts her rights.” *Spirit of Laws*, vol. I, bk. VI, ch. 17, 91.

**LS:** Yes, now, what is Montesquieu's opinion? He doesn't even finish that sentence. Is torture against nature?

**Student:** No.

**LS:** Yes. It is hard to say. "The voice of nature cries against me," which means cries against torture, which he is trying to defend. But this is not so firmly stated and this editor makes here the remark: "The diatribe of Montesquieu is a bit short and must have appeared weak compared with what was written a little bit later by Beccaria<sup>xxiv</sup> [famously an opponent of capital punishment] and Voltaire." Now, again the absence of indignation, although this comes a bit closer to indignation than the previous statement. Mr. R.?

**Student:** . . . and neutral political science and I was going to say that if you were a despot you could punish by torture. But perhaps that's going too far? But, on the other hand, the fact that he suggests this—that in despotism, God knows what they might have to do—

**LS:** But the fact was well known, after all. It was no secret to anyone that despots did this.

**Student:** Well, despots, only? The French, I believe, at that time—

**LS:** Yes.<sup>71</sup> Prussia abolished it in 1740 and England before, in the late seventeenth century.

**Student:**<sup>72</sup> He has stated earlier several of Beccaria's principles.

**LS:** Yes, but he doesn't go to the lengths. Beccaria denied the principle of capital punishment as such. He never goes so far, and on the very distinct grounds of Hobbes. I don't remember if he quotes Hobbes, but I do remember the argument. Since we all entered society in order to escape from the fear of violent death, society cannot possibly have survived to inflict death. That was his point. Other more practical considerations, but this was the fundamental point.<sup>73</sup>

**Student:** . . . assume there . . . another standpoint . . . that since fear is the principle of death . . . this seems to be an apology that he is not following true to his principle. You see from the negative side.

**LS:** No, I don't follow you.

**Student:** He says, "I was going to say that it might suit despotic states, where whatever inspires fear is the fittest spring of government." That is his principle. He's not following his principle; he doesn't follow that.

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<sup>xxiv</sup> Cesare, Marquis of Beccaria (1738–94), Italian philosopher and politician best known for his *On Crimes and Punishments*, which criticized torture and the death penalty.

**LS:** Well, all right. The chief result in something of this kind is correct but the net result would be that Montesquieu hesitates to say clearly, “torture is against natural right.” Whereas, he says that a man being compelled to be witness against himself is against natural right. Because there may be, after all the old considerations, a very brutal and tough criminal and he could not be induced by anything to betray his fellow gangster except—

**Student:** But Montesquieu has said that fear is the principle of despotism, therefore a despot—

**LS:** Yes, he suggests that in a way but he makes a big question mark. In other words, you can interpret him as follows: granting that this is so, that you cannot raise individual objection to despotic government using torture, I don’t like to be the man who says so. That would also be altogether not uninteresting, such a confession. Yes.

**Student:** But if we already saw in that phrase “natural defense” something like the right of self-incrimination, it seems possible that Montesquieu could feel very close to saying that we have a natural right against self-incrimination.

**LS:** That is true. But the question would be if self-incrimination is against natural right. It might well be, as it was shown so beautifully to the citizens of Chicago in the case of Mr. Giancana,<sup>xxv</sup> which you doubtless know,<sup>74</sup> about his right to withhold evidence against other criminals? You see, that is another point. And you might say<sup>75</sup> [that] men may be compelled to disclose evidence against other criminals, and [one] may<sup>76</sup> also use in certain particularly grave cases torture in order to extract it from him. That is the question.

**Student:** . . . torture and the question and he distinguishes between the minor and the major question.

**LS:** But the principle is still the same.

**Student:** No,<sup>77</sup> the major one had been supplied after the criminal had been convicted but before he was executed—

**LS:** Yes, that is, of course, pure nastiness.

**Student:** Well, isn’t this what he means in the last sentence of the first paragraph?

**LS:** But he doesn’t speak here explicitly of the question of aggravating the capital punishment as such. That is not the point.

We must stop. Next time will be Mr. M.

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<sup>xxv</sup> Salvatore Giancana, 1908–75. Italian-American mobster and boss of the Chicago outfit from 1957–66.

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<sup>1</sup> Deleted "of course."

<sup>2</sup> Deleted "liberty."

<sup>3</sup> Deleted "I."

<sup>4</sup> Deleted "But did you not say at a certain point ...."

<sup>5</sup> Deleted "Yes."

<sup>6</sup> Deleted "or a small republic."

<sup>7</sup> Deleted "a."

<sup>8</sup> Deleted "Yes."

<sup>9</sup> Deleted "LS: He mentioned Holland?"

<sup>10</sup> Deleted "I mean."

<sup>11</sup> Deleted "Well."

<sup>12</sup> Deleted "of course."

<sup>13</sup> Deleted "Montesquieu."

<sup>14</sup> Deleted "Well."

<sup>15</sup> Deleted "within."

<sup>16</sup> Deleted "and."

<sup>17</sup> Deleted "and."

<sup>18</sup> Deleted "namely."

<sup>19</sup> Deleted "Yes, well."

<sup>20</sup> Deleted "still."

<sup>21</sup> Deleted "And there is something to that surely. Let us see. The next paragraph then. Student: I think the translation confused that issue. It says in the French that the pains have diminished or augmented and in the same measure as one approaches or recedes from liberty.

LS: No, that is in the original."

<sup>22</sup> Deleted "as it were."

<sup>23</sup> Deleted "of course."

<sup>24</sup> Deleted "and he didn't question that. And."

<sup>25</sup> Deleted "Well, who, I mean."

<sup>26</sup> Deleted "notions."

<sup>27</sup> Deleted "Yes, that is true."

<sup>28</sup> Deleted "here."

<sup>29</sup> Deleted "i.e. a thing."

<sup>30</sup> Deleted "What does he mean by that?"

<sup>31</sup> Deleted "that."

<sup>32</sup> Changed from "there is here."

<sup>33</sup> Deleted "I mean."

<sup>34</sup> Deleted "then."

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<sup>35</sup> Deleted “No!”

<sup>36</sup> Deleted “Student: Well....”

<sup>37</sup> Deleted “no.

Student: You would say the opposite?”

<sup>38</sup> Deleted “of course.”

<sup>39</sup> Deleted “or.”

<sup>40</sup> Deleted “Well.”

<sup>41</sup> Deleted “laws of.”

<sup>42</sup> Deleted “to speak of.”

<sup>43</sup> Deleted “of course.”

<sup>44</sup> Deleted “a.”

<sup>45</sup> Deleted “is, of course.”

<sup>46</sup> Deleted “a jump.”

<sup>47</sup> Deleted “we know.”

<sup>48</sup> Moved “are.”

<sup>49</sup> Deleted “when.”

<sup>50</sup> Deleted “and it.”

<sup>51</sup> Deleted “Yes.”

<sup>52</sup> Deleted “I mean.”

<sup>53</sup> Deleted “a.”

<sup>54</sup> Deleted “Student: But would not Montesquieu’s end then....”

<sup>55</sup> Deleted “the.”

<sup>56</sup> Deleted “as we said.”

<sup>57</sup> Deleted “of.

<sup>58</sup> Deleted “in.”

<sup>59</sup> Deleted “in.”

<sup>60</sup> Deleted “Yes, for me this was a confirmation that my thinking of this possibility is not a mere edifice but can, in crucial points, be supported by direct evidence.”

<sup>61</sup> Deleted “change, a”

<sup>62</sup> Deleted “in.”

<sup>63</sup> Deleted “but.”

<sup>64</sup> Deleted “that.”

<sup>65</sup> Deleted “Let us see.”

<sup>66</sup> Deleted “therefore also.”

<sup>67</sup> Deleted ““there is a great evil among us....””

<sup>68</sup> Deleted “Now.”

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<sup>69</sup> Deleted “yes.”

<sup>70</sup> Deleted “So.”

<sup>71</sup> Deleted “Well.”

<sup>72</sup> Deleted “Well.”

<sup>73</sup> Deleted “Now, there was someone else. Yes.”

<sup>74</sup> Deleted “namely, what.”

<sup>75</sup> Deleted “well, even.”

<sup>76</sup> Moved “one.”

<sup>77</sup> Deleted “no.”

**Session 7: January 25, 1966**

[In progress] **Leo Strauss:** —is a good paper and the point at the end that fear, at least religious fear, is or can be or ought to be very powerful in republics is very well taken.

The other question which was a chief theme of your discussion of Book VII is, how far are these things—the position of women, marriage, monogamy—institutes of natural law? And you have rightly turned to the *Persian Letters*, because what he says here about the subject is very little. But he will take it up later in the books on population and marriage and there we will have to return to that.

What is the connection between luxury and women that they are treated in the same book?

**Student:**<sup>1</sup> Women seem to be more given to luxury than men. They apparently use their private fortunes, if they have any—those must be regulated in republics, or their dowries must also be moderate in republics—for luxurious purposes. As he says, incontinence always follows luxury and luxury, incontinence.

**LS:** Yes, but, still, what is the relation between women and luxury?

**Student:** Well, in one way, despite these superior sentiments of the heart, they are more frivolous, more occupied with trivialities; at least, in some states—in monarchies and despotisms. And all this means luxury, vanity, trifles.

**LS:**<sup>2</sup> Without any value judgments, women are more interested in adornment than men. I believe one can say that without any discriminatory intent. Yes?

**Student:** I wonder how good that point is. Because their weakness in pride leads them to vanity and luxury [inaudible words]. In chapter 9, Book VII—in other words, they're left with this in default of something men have. Women don't have pride.

**LS:** Do you remember the exact context?

**Student:** Their weakness doesn't permit them pride, so they can have only vanity.

**LS:** This has to be linked up with this passage that virtue qua virtue is<sup>3</sup> [independence] of the soul. And<sup>4</sup> [it] may be that he doubts<sup>5</sup> that this is frequently found among women. And that has nothing to do with the fact that there were very great female rulers.

**Student:** But why aren't women capable of pride? He didn't say that.

**LS:** If pride is understood in a very precise sense—<sup>6</sup>independence of the soul.

Let me explain what is the background of that. The strongest statement in favor of women in earlier times, and of their equality with man, is<sup>7</sup> Plato's *Republic*. Every position, every job is, and ought to be, accessible to women as well as men. And, in the same book, philosophers must be kings, and the kings, philosophers.

Now, if we look at the history of the world from this point of view, we find a number of outstanding queens—Queen Elizabeth the First, the Russian empresses, and one also finds, from time to time, [outstanding women] in business, in politics, if not as queens, and now Mrs. Gandhi. But, if you turn to philosophy, what about the women there?

**Student:** Jane Austen?

**LS:** Well, she is a wonderful writer, but she is not a philosopher. No, I think one can safely say there are none. When I made this point many years ago in a very nice small college, I was reprimanded by the man in whose class I spoke and he said, but what about Susanne [K. Langer]?<sup>1</sup> And the only thing I could say was that I had entirely forgotten her. But we would not seriously say that she would belong to the thirty great men we call philosophers. Now this seems to be so.

Now my argument is this: if there is a connection between what Montesquieu calls the independence of the soul and philosophy; and furthermore if there is a connection between independence of the soul and pride, in the severest sense, then it would be. Whether this thought can be attributed to Montesquieu is another matter. That would need some more reflection.

**Student:** Since they are not to be found in the political sphere, there is an immediate occasion for their lack of ambition and pride for some greater object than house and children.

**LS:**<sup>8</sup> If we want to open up the whole issue of the two sexes, that would take us very far. And it would be a good beginning to start from the *Persian Letters* where the subject of the administration of women is a major theme; because one of the chief subjects of correspondence between these Persians is how to administer wealth [and] one's harem.

Now I think that we should turn to the coherent discussion of our assignment, starting at Book VII, chapter 7. He says<sup>9</sup> in chapter 7 that virtue, attention, [and] vigilance are necessary for China.<sup>10</sup> This is very strange. China is, after all, a despotic state, and that a despotic state should need virtue, which is said to be the principle of republics and in particular of democracies, is a difficulty. The simplest solution would be here, he means by virtue, moral virtue in contradistinction to political virtue. Then he would be rid of the difficulty. But this is not quite true. We see in the preceding chapter, which is already devoted to China, that virtue has also a political meaning. Let us read, perhaps, in chapter 6, second paragraph.

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<sup>1</sup> Susanne K. Langer, author of *Philosophy in a New Key: A Study in the Symbolism of Reason, Rite, and Art* (Cambridge, MA: Harvard University Press, 1957).



**Mr. Reinken:** “On the contrary, in China, the women are so prolific, and the human species multiplies so fast, that the lands, though never so much cultivated, are scarcely sufficient to support the inhabitants. Here, therefore, luxury is pernicious, and the spirit of industry and economy is as requisite as in any republic. They are obliged to pursue the necessary arts, and to shun those of luxury and pleasure.”

**LS:** The political connection is here quite clear<sup>11</sup>. Let us read the next paragraph.

**Mr. Reinken:** “This is the spirit of the excellent decrees of the Chinese emperors. ‘Our ancestors,’ says an Emperor of the family of the Tang, ‘held it as a maxim that if there was a man who did not work, or a woman that was idle, somebody must suffer cold or hunger in the empire.’ And on this principle he ordered a vast number of the monasteries of bonzes to be destroyed.”<sup>ii</sup>

**LS:**<sup>12</sup> Here the tendency is<sup>13</sup> perfectly clear. Now we can explain this statement about virtue and China. Virtue is the principle of republics, but where do we find republics, according to what we have learned hitherto?

**Student:** Pagan antiquity.

**LS:** Pagan antiquity. Now we find virtue also in China; China is a despotism but what is it from a religious point of view? Pagan: this is the link. China was, after all, regarded as a model state by many people in the 18th century—a model of enlightened despotism,<sup>14</sup> [where] the emperor one day in the year plowed the fields and showed how necessary and important agriculture is and the whole Confucian tradition. There was a great cult of China in the 18<sup>th</sup> century to which Montesquieu opposed himself because he is an opponent of despotism, even enlightened [despotism]. But enlightened despotism was, in a way, apart from the traditional views. They established [the] position at that time, ultimately going back to Hobbes, the grandfather or father of enlightened despotism at that time. But Montesquieu precisely questions that.<sup>15</sup>

In the next chapter, he makes clear that the chastity of women is required in popular states. Let us read the second paragraph of<sup>16</sup> chapter 8.

**Mr. Reinken:** “Hence it is that the sage legislators of republican states have ever required of women a particular gravity of manners.”

**LS:**<sup>17</sup> This nasty fellow<sup>18</sup> says: hence the good legislators have demanded of women a certain gravity of manners. He doesn’t say of republics. By definition, a good legislator is a legislator of a republic. That is the point which this man completely destroys.

**Mr. Reinken:** “They have proscribed, not only vice, but the very appearance of it. They have banished even all commerce of gallantry—a commerce that produces idleness, that renders the women corrupters, even before they are corrupted, that gives a value to trifles,

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<sup>ii</sup> *Spirit of Laws*, vol. I, bk. VII, ch. 6, 100.

and debases things of importance: a commerce, in fine, that makes people act entirely by the maxims of ridicule, in which the women are so perfectly skilled.”<sup>iii</sup>

**LS:**<sup>19</sup> This cult of gallantry was at home especially in France,<sup>20</sup> i.e. in Christian Europe. You must not forget that. So, this would seem to lead us to an interesting conclusion which we have to test, namely, the connection between<sup>21</sup> virtue and the kind of religion.<sup>22</sup> Montesquieu has always this easy way out: I am speaking only of political virtue. But even this would be a grave assertion, to say that the Chinese religion would have certain advantages over Christianity from the point of view of political virtue.

Let us now turn to the next chapter and read the last paragraph of chapter 9.

**Mr. Reinken:** “In the cities of Greece, where they were not under the restraint of a religion which declares that even amongst men regularity of manners is a part of virtue —”

**LS:** “Purity of manners,” meaning strict prohibition of fornication and so on.

**Mr. Reinken:** “—where a blind passion triumphed with a boundless insolence—”

**LS:** You see that? Extreme, extremists.

**Mr. Reinken:** “—and love appeared only in a shape which we dare not mention, while marriage was considered as nothing more than simple friendship—”

**LS:** No,<sup>23</sup> “Whereas friendship alone had retired into marriages.” What does this mean? How does he translate it?

**Mr. Reinken:** “while marriage was considered as nothing more than simple friendship.”

**LS:** This is not, in this way, borne out by the text but I really don’t know what he means by that. Does anyone have the French? You have it.

**Mr. Reinken:** “*dans les mariages*” seems to be added and “mere” friendship, so that it went unaccompanied.

**LS:** I see, so a mere languid thing as compared with the other.

**Mr. Reinken:** “Only.”

**LS:** Yes, yes.

**Mr. Reinken:** “—such were the virtue, simplicity, and chastity of women in those cities, that in this respect hardly any people were ever known to have had a better and wiser polity.”<sup>iv</sup>

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<sup>iii</sup> *Spirit of Laws*, vol. I, bk. VII, ch. 8, 101.

**LS:** So, in other words, here there was a false religion, yet this brought about a higher standard of female chastity than present Europe. This is the point which he wants to make<sup>24</sup>. In the next chapter, read note d.

**Mr. Reinken:** “See in Livy, Book XXXIX., the use that was made of this tribunal (the Domestic) at the time of the conspiracy of the Bacchanalians. (They gave the name of conspiracy against the republic to assemblies in which the morals of women and young people were debauched.)”<sup>v</sup>

**LS:**<sup>25</sup> In other words, female virtue was understood from a political point of view. And how can we understand that? Why should republics, and especially democracies, be more concerned with good behavior of women than monarchies and despotisms? You see, he writes shorthand, we have to supply the links. Mr. R.?

**Student:** Because the republic turns on the virtue of its citizens; if the women are allowed to run free, they’ll corrupt their husbands.

**LS:** Yes, that is true, but, it is too literally Montesquieu and we have to supply some other consideration or words<sup>26</sup> which might be of some help.

**Student:** In a republic, a citizen is a public responsibility and this would be subversive.

**LS:**<sup>27</sup> [Yes], and why would it be subversive? Mr. M.?

**Student:** [Answer inaudible, something to do with the connection between religion and the regime.]

**LS:** But what has this to do with religion in itself? Montesquieu says that “in spite of their religion” they had these high standards of female virtue.<sup>28</sup>

I think one can simply say, you want to have a free government and that presupposes a high degree of mutual trust; and how is this possible if there are constant jealousies and so on? So, if every man can count on the fidelity of his wife, clearly, it would be much more stable. Now, of course, Montesquieu exaggerates grossly the virtue<sup>29</sup> [and] female chastity of the Greeks; especially Sparta was notorious for the bad behavior of their females. And one must never forget that this most famous of all women, Helen, came from Sparta. So Montesquieu accepts here a broad tradition, half mythical, of ancient virtue, and one has to qualify it properly in order to bring out what he truly means as distinct from what he merely asserts.

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<sup>iv</sup> *Spirit of Laws*, vol. I, bk. VII, ch. 9, 102–3.

<sup>v</sup> In original: “See in Livy, Book XXXIX., the use that was made of this tribunal at the time of the conspiracy of the Bacchanalians. (They gave the name of conspiracy against the republic to assemblies in which the morals of women and young people were debauched.)” *Spirit of Laws*, vol. I, bk. VII, ch. 10, 103.

Now we turn to chapter 11, the fourth paragraph.

**Mr. Reinken:** “Pope Sextus Quintus seemed to have been desirous of reviving the public accusation.<sup>vi</sup> But there needs very little reflection to see that this law would be more improper in such a monarchy as his than in any other.”<sup>vii</sup>

**LS:**<sup>30</sup> Public accusation for adultery, as distinguished from public accusation before a domestic tribunal consisting of relatives of the wife.<sup>31</sup> This is Pope Sextus V, a famous pope,<sup>32</sup> if not the greatest pope of the 16th century, who was very much concerned with the severity of manners. In other respects, too, [he] tried to establish it. But there is a fundamental incompatibility, Montesquieu says, between the papal state, more likely like his, and such severity of manners. What does he mean by that? It is extreme shorthand again. At any rate this is what he asserts. We can perhaps leave it at that.<sup>33</sup>

Now let us see in chapter 12. Yes?

**Student:** Mr. Strauss, isn’t this paragraph on the pope somewhat contradictory to the statement on the monks, who had very severe—

**LS:** Yes, but you cannot isolate the monks or the priesthood from the laity and the possible effect of one on the other. You know the monks are part of<sup>34</sup> [the] society of which the laity is another part. And he probably has something of this kind in mind: If you have a large number of people who are not supposed to have sexual relations, this will not work in the long run. So, the severity of the manners would have this undesired side effect. This is probably what he means. Sextus Quintus was a man of unimpeachable manners; he was extremely severe. I read the chapter of R.’s on him [R.’s history of the popes<sup>viii</sup>] and he tells one story which is unforgettable anyway. He waged a relentless war against the Banditi and on one occasion one of the commanding officers there sent foodstuffs to thirty bandits<sup>35</sup> on a fortified position on a hill. And, of course, the starved fellows jumped on the food and ate it up. But the food was poisoned and this amounted to a kind of irregular capital punishment. Sextus Quintus was highly pleased when he heard that. Now I don’t think that Montesquieu thinks of this extreme toughness of Sextus Quintus, but he must have had something of what I indicated in mind.

**Student:** I don’t want to drag it on, but the pope carried on successfully monastic severity at the time before there were Italian princes. So, what Montesquieu is saying about the monarchy such as his is the fact that there is a pope elected by cardinals. But wouldn’t he have to distinguish what they are governing because the polity of pope and cardinals is not unlike the polity of a monastic body electing an abbot, which is, admittedly, severe and austere but does not govern a large—

**LS:** Yes. This is the point. But it is essential to the situation<sup>36</sup> that the priests and especially the pope are the rulers of non-priests.<sup>37</sup> Remember what he said here before

<sup>vi</sup> In original: “Sextus Quintus seemed to have been desirous of reviving the public accusation.”

<sup>vii</sup> *Spirit of Laws*, vol. I, 104.

<sup>viii</sup> Leopold von Ranke (1795–1886), *History of the Popes*.

about the question of religion, which frowns on fornication in any form:<sup>38</sup> how can this be put into practice? Hobbes says somewhere in the *Leviathan*, on the basis of a New Testament passage regarding separating and not having any dealings with fornicators<sup>39</sup>—Hobbes says that means you can't have any dealings with the world altogether. So, in other words, this kind of rule is fit for small, voluntary societies. And<sup>40</sup> [when it] is applied to large societies which are not voluntary<sup>41</sup> it leads to these problems—

**Student:** Well, specifically it is the public accusation that is not appropriate to papal monarchies—not the impurity of morals.

**LS:** Not adultery, but this kind of prosecuting adultery, yes.

**Student:** Montesquieu had talked about the anonymous denunciation in Venice which is useful because it keeps the aristocracy in order [inaudible words] and says that you would call it tyranny. Is it possible that although it may, in a way, be desirable—the public accusation—it could be perverted, even as the anonymous accusation was in Venice, still useful but not very—

**LS:** No, this I believe on the contrary. If one starts from what you said, one could perhaps say that an anonymous accusation—of course, then, properly examined—would be better under such a regime. But, again, I wouldn't see why. One would have to develop this point which you raise about Venice in contradistinction to the pope.

But let us turn to the next chapter and let us read that.

**Mr. Reinken:** “The Roman laws subjected women to a perpetual guardianship, except they were under cover and subject to the authority of a husband. This guardianship was given to the nearest of the male relatives; and by a vulgar expression it appears they were very much confined. This was proper for a republic, but not at all necessary in a monarchy.

“That the women among the ancient Germans were likewise under a perpetual tutelage appears from the different codes of the Laws of the Barbarians. This custom was communicated to the monarchies founded by those people; but was not of long duration.”<sup>ix</sup>

**LS:**<sup>42</sup> This foreshadows a later theme which had been indicated already in an earlier passage. Here you have an old Roman institution compared with an old Germanic institution. The implication is that the old Germans were republicans, as this was a republic of some sort,<sup>43</sup> [at the very least, they were] non-despotic. And the meaning is this: These old Germanic laws and orders lead to the feudal order, and the feudal order is the soul of modern monarchies, as Montesquieu saw them. So, the feudal order is a relatively free order and, therefore, some things of feudal origin, the intermediary powers—the powers of the nobility, of the towns, of the parliaments, and even of the clergy—are conducive<sup>44</sup> to that kind of freedom which is possible in monarchies.

<sup>ix</sup> *Spirit of Laws*, vol. I, bk. VII, ch. 12, 5.

So England is, then, this strange land which is of Teutonic origin and, therefore, has these rudiments of freedom from the very beginning; and then [it] undergoes a profound modification of modern times. But why not altogether get rid of her past? But [this] is, then, the model for all political virtue.

Let us turn to chapter 17 at the beginning.

**Mr. Reinken:** “It is contrary to reason and nature that women should be mistresses in households, as was established among the Egyptians; but not that they should govern an empire.<sup>x</sup> In the former case the state of their natural weakness does not permit them to have the pre-eminence; in the latter their very weakness generally gives them more lenity and moderation, qualifications fitter for a good administration than roughness and severity.”<sup>xi</sup>

**LS:** Yes, well, we do not have to enter into a criticism.<sup>45</sup> Cleopatra is a good example that should show that one could have some doubts whether it is as simple as that. What I am interested in is only the very beginning of this paragraph. “It is against reason and against *nature*.” Nature and reason are two different things, but they agree, at least in this case. Whether they agree in all cases remains to be seen. This has very much to do with the question of natural law. Yes?

**Student:** You mention the word empires here; I wonder, have there ever been women who have governed small republics, small cities?

**LS:** You mean female tyrants.

**Student:** That’s what I had in mind.<sup>46</sup>

**LS:**<sup>47</sup> I don’t know. Yes?

**Student:** Yes, in some of the Italian city-states<sup>48</sup> [inaudible words] where [inaudible words] succeeds the husband. And I think Machiavelli—

**LS:** Are you thinking of the tyrant Caterina Sforza?

Do you mean to say that there is a case where a woman, after the murder of her husband, takes over the rule in her city? I remember that discussed in the *Discourses*.

**Student:** But it is a [inaudible words] I don’t think you’ll find a woman become [inaudible words]

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<sup>x</sup> In original: “It is contrary to reason and nature that women should reign in families, as was customary among the Egyptians; but not that they should govern an empire.”

<sup>xi</sup> *Spirit of Laws*, vol. I, bk. VII, ch. 17, 108.

**LS:** And she ruled then for her son; that is not the same. I do not know an example, at least as striking as the large number of women who have ruled large states.

This editor [referring to the French edition] makes this remark: “The history of antiquity, the examples which Montesquieu had before him, gave the reasons to him. In our modern democracies he would recognize that luxury and freedom of the women are therein very great, despite the egalitarian principle of government. Hence it is the economic factor, the multiplication of wealth, and the moral factor, the weakening of familial discipline, are stronger than the political factor.” What do you say to this point? In other words, in modern democracies, these things are no longer true—you can have a great amount of luxury, practically complete freedom to women—or at least the same freedom for women that men have—and this is no longer relevant. And this shows that the whole thing is not a political issue but depends on other things<sup>49</sup> [like] economic and moral factors. Yes?

**Student:** He assumes that the political principle is in opposition to that, but the political principle may encourage that from the beginning, which would leave the question moot as to which is more important or which is the determining principle.

**LS:** Yes, but that would be the question, whether Montesquieu asserts in the long run, when we<sup>50</sup> [have gone] through him, that the political factor is the most important factor, or, at least, the most determinative factor. It may very well be the most important and not the most determinative. That we must see. Did you want to say something?

**Student:** Montesquieu would not say that the United States is a small, poor, virtuous republic. Most animals calling themselves democracies now are masquerading as England masquerading as democracy.

But, still, is not Montesquieu guilty of a gross neglect, of a gross lack of imagination at least, that he did not foresee the possibility of a large-scale, luxurious democracy?

**LS:** It seems to me that we come to that a little later; he discusses that and he might be able to defend himself if we gave our country as an example.

**Student:** Yes, but how would it have to be stated to be in agreement with the facts?

**LS:** Well, this man speaks of the economic and the moral factors. Is there not a third factor which brought about that change? I mean, was it not necessary that there were people who criticized the traditional concept of female virtue and even of virtue in general in order to bring about these new kind of societies? This could not be called an economic or a moral factor strictly speaking, but, an intellectual factor—a kind of philosophy which questioned the previous assumption. Here<sup>51</sup> Montesquieu is one of the many questioning.

**Student:** What about also the change in the moral factor? Then republican virtue would change too.

**LS:** Yes,<sup>52</sup> but since this is hard to say—what is the cause and what is the effect, whether the dissolution of the [inaudible words] bonds preceded the laws or visa versa, is a complicated question. But, precisely if one takes this seriously, as we must, one must say there is surely another factor, and that is modern philosophy with its questioning of the older notions of the good life. And the question is, did Montesquieu neglect that factor, did Montesquieu neglect the factor of philosophy, modern philosophy in contradistinction to [inaudible words]<sup>53</sup> Montesquieu knew that very well and already next time we will come across a very definite reference to that great intellectual revolution with its infinite consequences. Yes?

**Student:**<sup>54</sup> He speaks of it in the *Persian Letters* in a passage where someone replies with praise of the arts and an observation that since the invention of the cannon, there is no city in Europe that cannot be taken by it. That is to say that [inaudible words]

**LS:** In other words that was not [inaudible words] but philosophers.

**Student:** No, the whole scientific revolution.

**LS:** Yes, we will find this.

Incidentally, regarding the question of the status of women in democracy, Tocqueville's *Democracy in America* has a chapter on the position of women in this country<sup>55</sup>. It is very striking to read because it shows the amazing change which has taken place since Tocqueville's time. Yes?

**Student:** [inaudible words] it seems to me that he has a modern insight that the capital accumulation in China and Russia, that the people need to be taught how to spend [inaudible words]

**LS:** His position regarding economic matters will come out later in the book. But the position which he takes here in the first republican books is<sup>56</sup> a pre-economical position. You remember the passage where he says, "our political writers speak all the time of finances etc. and the ancient politicians only wrote of virtue."<sup>57</sup> He comes very close to this old view in the first books of his work; and he gradually paves the way for<sup>58</sup> [the] modern approach which is in a way classically expressed by Mandeville—private vice, public benefit.<sup>59</sup> Therefore the vices such as avarice must not be viewed in the traditional light. That is slowly prepared here.

Now we come to Book VIII, and this is the last book dealing with political matters in the strictest sense—various regimes and their conditions.<sup>60</sup> In a very traditional manner, the final book is devoted to<sup>61</sup> corruption; whereas the previous chapters are devoted to their well-being and their healthy condition. So, there is a corruption of each of these regimes, even of despotism. We have discussed this more than once. Now let us read the first chapter.



**Mr. Reinken:** “The corruption of every government almost always begins with that of its principles.”<sup>xii</sup>

**LS:** “Almost always,” a wise qualification; sometimes it may come about without a corruption of its principles. And the most interesting case<sup>62</sup> is that of democracy, in Montesquieu’s sense, where a regime animated by virtue is corrupted without its principle being corrupted. We must see what that means. In other words, the limited power of virtue; there is something else in the world—let us call it “X”—which is, in a way, as important as the principle.

Now, then, in the next chapter he speaks of the corruption of democracy in the simple sense<sup>63</sup>: [when there is] extreme equality where people no longer have respect for government, for old age, [or] for parents—whereas this is essential to a democracy, that there be government and respect for government (and various kinds of government also within the family).<sup>64</sup> That is an old story but always worth being repeated. Let us read one paragraph toward the end. “Democracy has two excesses to avoid—”

**Mr. Reinken:** “—the spirit of inequality, which leads to aristocracy or monarchy, and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest.”<sup>xiii</sup>

**LS:**<sup>65</sup> The next chapter deals with the “spirit of extreme equality.” Let us read the second paragraph.

**Mr. Reinken:** “In the state of nature, indeed, all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the laws.”<sup>xiv</sup>

**LS:** Oh no, “by the laws.” This is a point which we must consider briefly. What we can reasonably expect in a democracy is legal equality; natural equality went out of the world with the state of nature. Equality before the law, as we say. The strongest formulation of this thought we find again in Rousseau’s *Social Contract*, at the end of the first book:

“I shall end this chapter and this book with a remark that must serve as basis for every social system. Instead of destroying natural equality, the fundamental pact substitutes, on the contrary, a moral and legitimate equality to what nature might have put of physical inequality among men, and, while they may be unequal in strength and in genius, they all become equal by convention and as a matter of right. Equality can only be conventional equality, not natural equality.”<sup>xv66</sup>

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<sup>xii</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 1, 109.

<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 3, 111.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 3, 111.

<sup>xv</sup> Jean-Jacques Rousseau, *Social Contract*. Edition unknown.

[T]hat is recognized in modern democratic theory in the expression “equality of opportunity,” meaning opportunity for the unequal men to develop their unequal gifts and derive unequal benefit from them.

In the last paragraph of this chapter he says the natural place of virtue is near freedom. What does this mean? You are not likely to find virtue in an unfree society. This presupposes a very particular concept of freedom, namely, that a free society is one which will not make difficult the fulfillment of our moral duties. Whereas monarchy and despotism are likely to do that. Something of this kind will be brought up by Montesquieu in his definition of freedom later in<sup>67</sup> Book XI. Yes?

**Student:** Also something to do with the fact that it is only in a free society where one has the opportunities to exercise virtue in the sense that it’s only if you have a choice in the matter that you can make a right choice. And, for instance, in a despotism where you have no practical choice anyway—

**LS:** Yes, but you could<sup>68</sup> say that in a despotism you may still be a moral man at your own peril. And, if you would say that a free society is one in which morality is no longer a risky thing—this is not necessarily a recommendation, because, perhaps it is essential for virtue to be risky.

**Student:** I was thinking of it in something of another way around. If there is a society in which it is possible—because of the<sup>69</sup> looseness of the government—to do wrong, then you are praiseworthy if you do the right thing. And in a society where the controls are so strict that there is no chance of getting away [with] doing wrong, your doing right—

**LS:** Oh, I see<sup>70</sup>. But that presupposes a concept of virtue in despotism, which is wholly alien to Montesquieu.<sup>71</sup> [T]his would be directed, say, against Plato, where the philosopher-king simply enforces virtue and there is no moral merit in the non-philosophers if they are virtuous. That is a serious consideration but of no interest to Montesquieu, because for him despotism and even monarchy are not—[and cannot be]—very<sup>72</sup> moral<sup>73</sup>.

Now let us read the next chapter.

**Mr. Reinken:** “Great success, especially when chiefly owing to the people, intoxicates them to such a degree that it is impossible to contain them within bounds. Jealous of their magistrates, they soon become jealous likewise of the magistracy; enemies to those who govern, they soon prove enemies also to the constitution. Thus it was that the victory over the Persians in the straits of Salamis corrupted the republic of Athens; and thus the defeat of the Athenians ruined the republic of Syracuse.”<sup>xvi</sup>

**LS:** You remember the first paragraph [of the Book]? “The corruption of each government begins almost always with the corruption of the principles.” But the question is,<sup>74</sup> what are the other factors which corrupt a regime? One is victory. Here you have

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 4, 112.

something for which the Athenians can in no way be blamed<sup>75</sup>: resisting the Persians. And, yet, that victory had its consequences which were most questionable. So, this is beyond human control; men cannot guarantee the survival [and] the permanence of their institutions because of these complications. Yes?

**Student:** Doesn't this point to a difficulty, an unnatural quality of a republic? The argument here would be that after the Athenians gained a victory at Salamis, the lower classes<sup>76</sup> discovered that they were very important for the state because they were the ones that manned the ships. Therefore, in a way, what they discovered was that there was something wrong with the old Athenian government. It was based on a false assumption as to what was important. So, in a way, it was the truth that corrupted it—the true facts about Athenian power.

**LS:** You argue here, of course, from a non-Montesquieu basis.<sup>77</sup> Montesquieu starts from this myth<sup>78</sup> which has come down to us in classical writings, even in Plato and Aristotle<sup>79</sup>, that there was a kind of golden age before the democracy came,<sup>80</sup> at the time of the Persian wars, where virtue ruled. And then the question is, how come that virtue lost its power over the Athenians.<sup>81</sup> Even Aristotle says this, that as a consequence of the victory in the Persian wars a kind of necessity brought it about: necessity<sup>82</sup> in the sense in which Machiavelli used it sometimes, necessity here and virtue there. There is a kind of necessity in political matters which may favor, under certain conditions, virtue and in other situations<sup>83</sup> [may] have the opposite effect.

In the next chapter, in the second paragraph from the end.

**Mr. Reinken:** “An aristocracy may maintain the full vigor of its constitution if the laws be such as are apt to render the nobles more sensible of the perils and fatigues than of the pleasure of command: and if the government be in such a situation as to have something to dread, while security shelters under its protection, and uncertainty threatens from abroad.”<sup>84</sup>

“As a certain kind of confidence forms the glory and stability of monarchies, republics, on the contrary, must have something apprehend.”<sup>xvii</sup> A fear of the Persians supported the laws of Greece. Carthage and Rome were alarmed, and strengthened by each other.”<sup>xviii</sup>

**LS:** “By fear of each other.” That is the point which I want to bring out. External enemies keep republics on their toes, i.e. fear. So without this support, virtue might not be strong enough. In other words, we have here virtue but then what Montesquieu does, and thus foreshadows what is now social science, is<sup>85</sup> [force us] to analyze the conditions of virtue. And these conditions are such things, for example, as the external foreign policy situation.<sup>86</sup> This would have one interesting implication: if such fear of foreign enemies is essential to virtue, there cannot be<sup>87</sup> [a] world state.<sup>88</sup> That is true for other reasons but this is the point.

<sup>xvii</sup> In original: “As a certain kind of confidence forms the glory and stability of monarchies, republics, on the contrary, must have something to apprehend.”

<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 5, 113.

**Student:** If this foreshadows his principle of the countervailing powers, would this imply that they are based on a fear of each other. This seems to be a system of checks.

**LS:** Well, no, that somehow would take out the life of the point which we are making. In other words, Montesquieu is not here concerned with the limitation of powers—

**Student:** But this seems to foreshadow that insight.

**LS:** Oh, well, that comes very clear later on in the separation of powers in Book XI.

**Student:** Well, isn't this based on the same principle?

**LS:** No, that is a different thought.

**Student:** Wouldn't you qualify that implication about the world state by saying there cannot be a world state "organized on republican principles?" There might be a world state based on, say, the principle of despotism.

**LS:** Yes, but then it would be, from his point of view, the most outrageous despotism.

**Student:** Well, yes!

**LS:**<sup>89</sup> I think what he says later on about climate and so on makes it impossible. We will come to that.

**Student:** If republics always need fear of foreign enemies, inevitably to survive they must have victories over those enemies; and the victories bring corruptions—

**LS:** Yes, well that means that there is nothing eternal.

**Student:** Or, that republics are particularly unstable.

**LS:** Oh no, monarchies also have their enemies.

**Student:** Monarchies don't need the enemies though as a principle of their regime. I mean, is it possible to imagine a monarchy in a favorable geographic situation where she may be for years without any trouble from others?

**LS:** Yes, for many, many generations, there is no doubt. But why should this not be true of republics? The classical case<sup>90</sup> is that of Rome which was very virtuous according to that simple formula, and so virtuous that she conquered the whole world. And then that was the end of her freedom and the end of her virtue. Could Rome have stopped<sup>91</sup> when it had conquered the larger part of Italy? I.e., simply prevented the taking over of the Mediterranean by the Carthaginians? Could she have stopped there?

**Student:** Isn't virtue upheld by the constant presence of war? That the largest part of training for virtue consists of training for war?

**LS:** Not all of it<sup>92</sup>—that is Sparta; in Athens it was different. But, the key point is simply [this]: is virtue—and this is a very grave question since political virtue insensibly shifts into moral virtue—<sup>93</sup>possible without very great evils as its condition?<sup>94</sup> [This is an] old problem, especially of Machiavelli, which comes up here in a much less insulting and shocking manner but which is, of course, known to Montesquieu.

In the next chapter he calls China a monarchy, not a despotism. We have seen that China has its good sides and monarchy is<sup>95</sup> better than despotic states.

In chapter seven, the second paragraph before the end.

**Mr. Reinken:** “Again, it is corrupted when mean and abject souls grow vain of the pomp attending their servitude, and imagine that the motive which induces them to be entirely devoted to their prince exempts them from all duty to their country.”<sup>xix</sup>

**LS:** “Their fatherland.”<sup>96</sup> They think that they owe everything to the prince and not to the fatherland. Here he speaks of souls suddenly, which he doesn't ordinarily do. If we develop that it could mean that he is also speaking<sup>97</sup> of people.<sup>98</sup> He means here<sup>99</sup> [as well] the ordinary flatterers of kings, but<sup>100</sup> [also] people who think they only have duties to God [and] the prince, and none to mankind, the country, [and] the fatherland.

The beginning of chapter 8.

**Mr. Reinken:** “The danger is not when the state passes from one moderate to another moderate government, as from a republic to a monarchy, or from a monarchy to a republic; but when it is precipitated from a moderate to a despotic government.”

**LS:**<sup>101</sup> What he implies is that a change from a monarchy to a republic is nothing to be afraid of—that is conveyed here very clearly. Naturally, we know that, but it is not stated for very obvious reasons. Yes, read the next paragraph.

**Mr. Reinken:** “Most of the European nations are still governed by the principles of morality.”

**LS:** More literally, “manners.”

**Mr. Reinken:** “But if from a long abuse of power or the fury of conquest, despotic sway should prevail to a certain degree, neither morals nor climate would be able to withstand its baleful influence: and then human nature would be exposed, for some time at least, even in this beautiful part of the world, to the insults with which she has been abused in the other three.”<sup>xx</sup>

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<sup>xix</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 7, 114.

<sup>xx</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 8, 114–15.

**LS:** Yes, Australia was not yet regarded as a partner. Europe could very well become despotically ruled although its climate does not favor despotic rule. In the meantime we have become familiar<sup>102</sup> [with] that. No monarchy without nobility, we have heard that before.

In chapter ten, how despotisms maintain themselves: strictly speaking, despotism couldn't maintain itself for any length of time, but accidental causes prevent this—<sup>103</sup> situation, climate, [and] genius of the people may very well explain it.

I think we turn to chapter 13 for a point which was brought up by Mr. M. in his paper: the effect of an oath on a virtuous people.

**Mr. Reinken:** “There is no nation, says Livy, that has been longer uncorrupted than the Romans; no nation where moderation and poverty have been longer respected.”

**LS:** Well, the word is not nation but “people,” “*peuple*.” That is of some interest, as we will see later.

**Mr. Reinken:** “Such was the influence of an oath among those people, that nothing bound them more strongly to the laws. They often did more for the observance of an oath than they would ever have performed for the thirst of glory or for the love of their country.”

**LS:**<sup>104</sup> In the next paragraph when he says: Quintus was a private citizen, the people was more religious than its leaders. Now read the next paragraph.

**Mr. Reinken:** “The people were more religious than those who pretended to direct them; they would not listen to the distinctions or equivocations of the tribunes.

“When the same people thought of retiring to the Sacred Mount, they felt some remorse from the oath they had taken to the consuls, that they would follow them into the field. They entered then into a design of killing the consuls; but dropped it when they were given to understand that their oath would still be binding. Now it is easy to judge of the notion they entertained of the violation of an oath from the crime they intended to commit.”

**LS:**<sup>105</sup> The murder was only against human law and the crime against [divine]—yes, the next paragraph.

**Mr. Reinken:** “After the battle of Cannae, the people were seized with such a panic that they would fain have retired to Sicily. But Scipio having prevailed upon them to swear they would not stir from Rome, the fear of violating this oath surpassed all other apprehensions.”

**LS:** “All other *fears*.”

**Mr. Reinken:** “Rome was a ship held by two anchors, religion and morality, in the midst of a furious tempest.”<sup>xxi</sup>

**LS:** Now here it seems the word *le peuple*, the people, goes through the whole chapter. Political virtue seems to need religion, but<sup>106</sup> not necessarily Christian religion. That is clear because this was pagan Rome. But, that must especially be in the people, not necessarily in the leaders. Now what is this religion? What is the core of it? Answer: a certain kind of fear,<sup>107</sup> which<sup>108</sup> also makes them more amenable to being ruled. This is straight Machiavelli, what he conveys rather than what he explicitly says in his *Discourses*.

In the next chapter there is a similar thought: not the<sup>109</sup> virtue but the authority of the Senate kept Carthage virtuous. The chapter is somewhat enigmatic because he speaks of the smallest change and yet the change is in no way small at all.

Chapter 15 is an example of the extraordinary things Montesquieu can do in calling a part of his book a chapter. Let us read that.

**Mr. Reinken:** “15: ‘Sure Methods of Preserving the Three Principles.’

“I shall not be able to make myself rightly understood till the reader has perused the four following chapters.”<sup>xxii 110</sup>

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<sup>1</sup> Deleted “Well.”

<sup>2</sup> Deleted “Well.”

<sup>3</sup> Deleted “independent.”

<sup>4</sup> Deleted “that.”

<sup>5</sup> Deleted “this.”

<sup>6</sup> Deleted “I mean.”

<sup>7</sup> Deleted “of course.”

<sup>8</sup> Deleted “Well.”

<sup>9</sup> Deleted “here.”

<sup>10</sup> Deleted “Now.”

<sup>11</sup> Deleted “I think.”

<sup>12</sup> Deleted “Well.”

<sup>13</sup> Deleted “I think.”

<sup>14</sup> Deleted “which.”

<sup>15</sup> Deleted “Now.”

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<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 13, 19.

<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 15, 120.

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<sup>16</sup> Deleted “that.”

<sup>17</sup> Deleted “Now look.”

<sup>18</sup> Deleted “he.”

<sup>19</sup> Deleted “Now.”

<sup>20</sup> Deleted “and.”

<sup>21</sup> Deleted “virtue and religion.”

<sup>22</sup> Deleted “Now, of course.”

<sup>23</sup> Deleted “no, no.”

<sup>24</sup> Deleted “here.”

<sup>25</sup> Deleted “Yes.”

<sup>26</sup> Deleted “even.”

<sup>27</sup> Deleted “Uh huh.”

<sup>28</sup> Deleted “Well.”

<sup>29</sup> Deleted “the.”

<sup>30</sup> Deleted “Yes.”

<sup>31</sup> Deleted “Now.”

<sup>32</sup> Deleted “and.”

<sup>33</sup> Deleted “I believe that you wanted to say something before Mr. S. or has this been taken care of?

Student: I can’t seem to remember why I did, if I did.

LS: I see. So, it can’t have been terribly important, even to you.”

<sup>34</sup> Deleted “type same.”

<sup>35</sup> Deleted “there.”

<sup>36</sup> Deleted “that there is.”

<sup>37</sup> Deleted “And, for example, if you.”

<sup>38</sup> Deleted “and.”

<sup>39</sup> Deleted “and.”

<sup>40</sup> Deleted “even.”

<sup>41</sup> Deleted “and then.”

<sup>42</sup> Deleted “Now.”

<sup>43</sup> Deleted “surely.”

<sup>44</sup> Deleted “to freedom—.”

<sup>45</sup> Deleted “You know.”

<sup>46</sup> Deleted “LS: No, do you know an example?

Student: No, I don’t.”

<sup>47</sup> Deleted “Well.”

<sup>48</sup> Deleted “intermittently.”



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<sup>49</sup> Deleted "on."

<sup>50</sup> Deleted "are."

<sup>51</sup> Changed from "Now here is where."

<sup>52</sup> Deleted "sure."

<sup>53</sup> Deleted "And does, well, some of you have read a bit of Montesquieu beyond what we have read now; what would be the right answer? Well."

<sup>54</sup> Deleted "Well."

<sup>55</sup> Deleted "and."

<sup>56</sup> Deleted "of course."

<sup>57</sup> Deleted "And."

<sup>58</sup> Deleted "this."

<sup>59</sup> Deleted "and."

<sup>60</sup> Deleted "And."

<sup>61</sup> Deleted "the."

<sup>62</sup> Deleted "of course."

<sup>63</sup> Deleted "And that is."

<sup>64</sup> Deleted "Well."

<sup>65</sup> Deleted "Extreme equality."

<sup>66</sup> Deleted "Well."

<sup>67</sup> Deleted "the eleventh book."

<sup>68</sup> Deleted "of course."

<sup>69</sup> Deleted "well."

<sup>70</sup> Deleted "I see."

<sup>71</sup> Deleted "I mean."

<sup>72</sup> Deleted "much."

<sup>73</sup> Moved "and cannot be."

<sup>74</sup> Deleted "what is that other factor."

<sup>75</sup> Deleted "for, for."

<sup>76</sup> Deleted "the poor people."

<sup>77</sup> Deleted "I mean."

<sup>78</sup> Deleted "you can say."

<sup>79</sup> Deleted "of course."

<sup>80</sup> Deleted "say."

<sup>81</sup> Deleted "And."

<sup>82</sup> Deleted "that one can say."

<sup>83</sup> Deleted "we."

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<sup>84</sup> Deleted "LS: Yes go on."

<sup>85</sup> Deleted "we have."

<sup>86</sup> Deleted "And."

<sup>87</sup> Deleted "of course, no."

<sup>88</sup> Deleted "Well."

<sup>89</sup> Deleted "Well."

<sup>90</sup> Deleted "of course."

<sup>91</sup> Deleted "say."

<sup>92</sup> Deleted "I mean."

<sup>93</sup> Deleted "is human virtue."

<sup>94</sup> Deleted "The."

<sup>95</sup> Deleted "of course."

<sup>96</sup> Deleted "yes, that."

<sup>97</sup> Deleted "here."

<sup>98</sup> Deleted "Of course."

<sup>99</sup> Deleted "also."

<sup>100</sup> Deleted "of."

<sup>101</sup> Deleted "So."

<sup>102</sup> Deleted "to."

<sup>103</sup> Deleted "namely."

<sup>104</sup> Deleted "Well, we cannot read the whole chapter but."

<sup>105</sup> Deleted "Well."

<sup>106</sup> Deleted "of course."

<sup>107</sup> Deleted "fear."

<sup>108</sup> Deleted "of course."

<sup>109</sup> Deleted "decay of."

<sup>110</sup> Deleted "LS: Yes, this seems to foreshadow [inaudible word]. Well, it is surely eighteenth century. I am sorry that we have to leave it at that. Next time we will have, if I am not mistaken, Mr. V."

**Session 8: January 27, 1966**

**Leo Strauss:** Your paper was in a way shapeless. One could not recognize the structure of these two Books, IX and X. In particular, it did not become sufficiently clear that Montesquieu is discussing here the principles of international law. You mentioned that, but too much in passing. For example you spoke of the obligation to humanity but you didn't make clear how such an obligation is derived [or] on what it is based according to Montesquieu.<sup>1</sup> The fact that he is a nice guy, we know that, and the reason we read him is not because he is a nice guy but that he is a worthwhile thinker. Now what is the reason why there exists an obligation to humanity? One has to go back to the root of the whole doctrine of right.

**Student:**<sup>2</sup> He mentions four reasons: one was natural law, one was the law of reason, one was the law of political societies. And natural law was a reason that said that everything tends to the preservation of the species. However, you could object to this that the preservation of the species is not at issue and the killing of the species is not threatened. The law of reason is that you should do unto others as you would have them do unto you.

**LS:** Yes, what is the basis for that?

**Same Student:** The law of reason.

**LS:** You state it very powerfully in the early part of your paper, how important fear is. Now, if you state this same thing positively, what is behind that fear ultimately?

**Same Student:**<sup>3</sup> The fear of losing your life.

**LS:** Yes, a concern for self-preservation. All right, everyone is concerned with his self-preservation and that right cannot be questioned. Why this is so, is not so easy to answer but that has been done mainly by Hobbes and Locke and can here be presupposed. But<sup>4</sup> how do we come from this right of each to preserve himself to this obligation to humanity, as you call it?<sup>5</sup>

**Same Student:**<sup>6</sup> If we go around killing people then we would have to expect people to go around killing us.

**LS:** Yes, but even more simply because what is the basis of your right? It is the same basis of everyone's right. And therefore your right, being the right of each [and] not only of you, creates a universal principle. Today this problem is concealed owing to this so-called relativism which now prevails, but in a way it is [still] present<sup>7</sup>. For example, one can say the problem is as follows: The whole relativistic position as now ordinarily taught is to the effect that all values are equal—they don't say that, but this is what they imply. Whatever a man chooses is not intrinsically superior or inferior to any other value choice

made by him or any other man at any other time. But if all values are equal, it follows necessarily that they must be treated as equal and therefore the equality of all values.

Now this cannot quite be done because if someone cherishes a value as his highest value slitting other people's throats, [then] this cannot co-exist very well with other people's values. So, one has to qualify it as one has to qualify all such statements: equality of all values as far as possible. And that is the premise of present-day libertarianism—i.e., those which would make it impossible for others to cherish their values must be excluded, to say nothing of the fact that the majority has a right beyond the minority (other things being equal) because there is no other way of settling such controversies peacefully.

<sup>8</sup>At the end of the last meeting Mr. B. reminded me of the fact that we had not spoken of two passages in Book VI.<sup>9</sup> Book Six, chapter 19, beginning with despotic states.

**Mr. Reinken:** "The use of the law of retaliation is very frequent in despotic countries, where they are fond of simple laws."<sup>10</sup>

**Student:** Note "s" to that says, "It is established in the Koran. See the chapter of the Cow."

**LS:**<sup>11</sup> Why does he refer to the Koran of all things? What he means, of course, is "an eye for an eye." That is the point. Where does it occur?

**Student:** In the Old Testament.

**LS:**<sup>12</sup> This is one of the things which he does in his slightly underhanded way, but he is not very deceptive, because very few people had heard of the Koran, and still less of the chapter on the Cow, and yet had heard it from the Pentateuch.

Now the same applies to the beginning of the next chapter.

**Mr. Reinken:** "In China, fathers are punished for the crimes of their children."<sup>ii</sup>

**LS:**<sup>13</sup> Does this ring a bell?<sup>14</sup> This is one of the many allusions we have seen to the effect of, despotism, this thing at home in the orient, is also in the background of the Bible and finally, of course, of the Old Testament—a thought which we can trace much more subtly stated to Machiavelli's *Discourses* and which came into the open in the more popular literature of the 18th century.<sup>15</sup>

Now there is one more point in Book VIII,<sup>16</sup> chapter 16, the second paragraph.

**Mr. Reinken:** "In an extensive republic the public good is sacrificed to a thousand private views; it is subordinate to exceptions, and depends on accidents. In a small one,

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<sup>i</sup> *Spirit of Laws*, vol. I, 92.

<sup>ii</sup> *Spirit of Laws*, vol. I, 92.

the interest of the public is more obvious, better understood, and more within the reach of every citizen—”

**LS:** More precisely, “in small republics the common good is better felt, sensed, better known, closer to every citizen.” Yes.

**Mr. Reinken:** “—abuses have less extent, and, of course, are less protected.”

**LS:**<sup>17</sup> This is<sup>18</sup> a point which is crucial for Aristotle and Plato: why the proper political organization is a small one. Mutual knowledge [and] mutual trust belong together.

Now the next paragraph.

**Mr. Reinken:** “The long duration of the republic of Sparta was owing to her having continued in the same extent of territory after all her wars. The sole aim of Sparta was liberty; and the sole advantage of her liberty, glory.”<sup>iii</sup>

**LS:** Is this not surprising, this sentence about Sparta and her sole aim? What were we led to expect that Sparta’s sole end was?<sup>19</sup>

**Student:** Virtue.

**LS:** Virtue! But virtue is only the energizing principle, it is not the end. The end ultimately is glory. Yes?

**Student:** This would seem to indicate that liberty is not something choice-worthy in itself, that liberty was had for the sake of glory.

**LS:** Yes, there is a difference because he says that the only end of Sparta was liberty, the only advantage. In other words, you may raise the question “why liberty?” And the answer given in Sparta was glory. So, the ultimate end in Sparta was glory and virtue came in only as a means toward that end. That is important for the imminent criticism of Sparta. Yes?

**Student:** He doesn’t at all generalize from this about all republics does he?

**LS:**<sup>20</sup> No, but he compels us to wonder whether this may not be generalized—that virtue is in no case the end. And why does he compel us to do this? He says only something about one particular state, Sparta, but why is it necessary to universalize the question, i.e. not to limit it?

**Student:** Virtue is the efficient cause of all republics and—

**LS:** Yes, so then?

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<sup>iii</sup> *Spirit of Laws*, vol. I, bk. VIII, ch. 16, 120.

**Student:** He leaves it open as to the end.

**LS:** Very good, that is the point. In other words, he makes us understand more clearly that while virtue is the principle, because it is the principle, it is not the end. And, therefore, the question of the end is open.

**Student:** Is the question open or does he repudiate it as the end?

**LS:** Here, he says.

**Student:** Not in this sentence, but in philosophy in general?

**LS:** Oh, that goes too far! I mean, even I said there are [no] natural ends,<sup>21</sup> but this does not mean that there are not ends which may be for men [and] which man realizes to be ends.

**Student:** But Aristotelian ends of the state?

**LS:** That is the natural ends.<sup>22</sup> This problem was discussed in a clear manner by Spinoza in the preface to Book IV in his *Ethics* where he raises the question: how can we get a norm for human life if there are no [natural] ends<sup>23</sup>? The answer is that we must figure out such an end in accordance with our nature. The Aristotelian ends—the same is also true of Thomas Aquinas and of the stoics—[and] the ends in the pre-modern sense are not figured out. They are, in a way, discovered by man, but they do not owe their being to the fact that they are figured out. There is a modern word which is much more commonly used in our age than “end” and that is “ideal,” and ideal means something which human reason produces. The ends are not understood to be products of human reason, but discovered by human reason. Mr. W.?

**Student:**<sup>24</sup> He says that the sole aim of Sparta was liberty *after all her wars* and in Book XI he said that the aim of Sparta was war.<sup>25</sup>

**LS:** Why don't we cross that bridge when we come to it.

**Student:** Well, I wonder if he might not mean liberty ironically here?<sup>26</sup> There is a contradiction.

**LS:** The only thing that one could grant is that from this passage it would follow that liberty is not necessarily the end, even of those who are in favor of liberty, but that this liberty is in the service of an ulterior end—in this case, glory. In other words, that would be a kind of danger signal when we come to Book XI when political liberty is discussed, and political liberty taken apparently as an end in itself. If we remember this passage we will say, is this an end in itself? We can't say more about it. That is exactly the point in a writer like Montesquieu: He forces us to think or to remain on our toes. He doesn't hesitate to contradict himself because if he is not confused in his own mind,<sup>27</sup> [even if]

the reader is temporarily confused [it] doesn't do any harm to the reader if<sup>28</sup> [he] is not lazy. Mr. A?

**Mr. A:** Would this be the same thought that is expressed by, I believe, Gorgias, that says that the ends of political life are freedom and empire?

**LS:** Yes, freedom here means that you can do what you like and are not subject to another man's will,<sup>29</sup> and empire<sup>30</sup> [means] that you are not only not a slave but a master of others. But you don't have to think of Gorgias because that is a very common notion up to the present time. If you would look, not even [into] the hearts, but into the words of very successful people you might find that there too.

But, let us turn to Books IX and X, and first Book IX. This is a new part of the whole book. We are now<sup>31</sup> [finished] with the parts dealing with the inner<sup>32</sup> political structure of the various regimes and now we come to the external relations<sup>33</sup>: first, defense against foreign states.<sup>34</sup> This change of subject matter is accompanied by a deeper change, by a change of the point of view. Hitherto, it was understood that republics are best,<sup>35</sup> but *ancient* [republics]. From this it follows that the preference which he showed for republics very clearly is a purely theoretical affair. Republics are better but belong to antiquity because we live now in this sordid age where they are impossible.

There is this proportion, republic to monarchy<sup>36</sup> [as] ancients [are] to moderns. And yet, this is not quite true because we have seen in Book V, chapter 19, that England, which is doubtless a modern state, is a republic, although under the guise of a monarchy.

Now, in this book, we come to modern republics which are not disguised as monarchies. And the republicanism which he fostered, as it were, by suggestion can be a very practical business in modern men.<sup>37</sup>

Now let us<sup>38</sup> turn to the beginning of Book IX,<sup>39</sup> the first two paragraphs.

**Mr. Reinken:** "If a republic be small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection."

**LS:** "Vice,"<sup>40</sup> he says.<sup>41</sup>

**Mr. Reinken:** "To this twofold inconvenience democracies and aristocracies are equally liable, whether they be good or bad. The evil is in the very thing itself, and no form can redress it."

**LS:** So, the difficulty<sup>42</sup> has nothing to do with goodness or badness; even if it is a good republic, it would be greatly in danger by being small or by being large. It is, as we could say, a technical problem.<sup>43</sup>

**Mr. Reinken:** "It is, therefore, very probable that mankind would have been, at length, obliged to live constantly under the government of a single person, had they not contrived

a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical, government. I mean a confederate republic.”<sup>iv</sup>

**LS:** This paragraph clearly shows that Montesquieu still maintains his republican preferences. He doesn’t go so far as to say that mankind would be condemned, but he does say that mankind would be obliged<sup>44</sup>—it means almost condemned. He looks for the possibility of republics, even in large states.

**Student:** I was wondering what the word finally, or at end, means in the beginning of that sentence? Does it mean that it was possible to have small un-confederated republics? Because at one time they lived in small republics that were not confederated.

**LS:** Yes, what precisely does this mean?

**Student:** A single republic might get on very prosperously for a few centuries, like Rhodes, but in the long run it gets knocked off sooner or later. So, that is what “*à la fin*” means.

**LS:** But still, a couple of centuries is quite some time. We must not demand too much.

**Student:** It would seem that there is some necessity toward the creation of larger states. Greece was lucky because it defeated Persia and then there were no large states around. Once large states form, then small republics go under.

**LS:** Perhaps he means this, that is probably the simplest construction of the sentence: all small states would have been destroyed but for the fact that men imagined this new possibility of confederate republics. You are right that a problem is created by the fact that the federal republic is not a modern invention but goes back to antiquity.

In the sequel, in the same chapter, he speaks of some ancient confederacies. And then, in a new paragraph, he speaks of the modern ones.

**Mr. Reinken:** “Hence it proceeds that Holland, Germany, and the Swiss cantons are considered in Europe as perpetual republics.”

**LS:** Yes, “are regarded.” This “*sont regardées*” is a slight qualification because one wouldn’t think of the German Reich of the eighteenth century as a republic, although, in a sense,<sup>45</sup> it is a republic. There is nothing of the spirit of a republic there. Similar considerations would apply to the Swiss and even to the Low Countries.

The next paragraph.

**Mr. Reinken:** “The associations of cities were formerly more necessary than in our times. A weak, defenceless town was exposed to greater danger. By conquest it was

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<sup>iv</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 1, 126.



deprived not only of the executive and legislative power, as at present, but, moreover, of all human property.”<sup>v</sup>

**LS:** Yes, and read the note.

**Mr. Reinken:** “Civil liberty, goods, wives, children, temples, and even burying-places.”<sup>vi</sup>

**LS:** The fate of Troy is the simplest example. So<sup>46</sup> this harsh necessity had this beneficent effect: that there is<sup>47</sup> thought of the federations.

Let us turn to the beginning of the next chapter.

**Mr. Reinken:** “The Canaanites were destroyed by reason that they were petty monarchies that had no union or confederacy for their common defence; and, indeed, a confederacy is not agreeable to the nature of petty monarchies.”<sup>vii</sup>

**LS:** This was a passage that was regarded as very offensive in Montesquieu’s time. He was accused on this ground, he was criticized, and he gave this defense which is quite interesting in light of present-day discussions:

“I have said that the people of Canaan were not confederates; well, God has willed that they should not be confederates. God did not change the course of nature, except when the course of nature did not enter into the course of his designs. He made miracles. He made them only when his wisdom demanded them. I have said that Joshua found less resistance because the small peoples of Canaan were not confederated. Well, the political condition of the small peoples of Canaan entered into the plan of God as the Jordan, the mountains, the valleys, the situation of the country entered into his plan.”<sup>viii</sup>

That was Montesquieu’s defense, but clearly he means something slightly more than that.<sup>48</sup> He would not hesitate to give an account of the conquest of Canaan in entirely political terms, just as Machiavelli proposed, and [they] both regarded the theological account as misleading.

Now, the next paragraphs.<sup>49</sup> What he wants to show is that federation of republics is a much more natural thing than a federation of small monarchies.<sup>50</sup>

**Mr. Reinken:** “As the confederate republic of Germany consists of free cities, and of petty states subject to different princes, experience shows us that it is much more imperfect than that of Holland and Switzerland.”

**LS:** Well, this was written after Frederick the Great’s conquest of Silesia which showed clearly the imperfection of that confederacy, 1740-1741. Yes, the next paragraph.

<sup>v</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 1, 126–27.

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 1, 127.

<sup>vii</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 2, 127.

<sup>viii</sup> Edition unknown. Apparently Strauss’s own translation.

**Mr. Reinken:** “The spirit of monarchy is war and enlargement of dominion: peace and moderation are the spirit of a republic.”<sup>ix</sup>

**LS:** Yes, let us stop there. What do you say to this sentence? Are republics more peaceful than monarchies?

**Student:** Well, it’s only a certain type of a republic that he has described, because, for example, he has just spoken of Rome and Athens where they did conquer.

**LS:** I see. But, how can he say, then, that the spirit of republic is peace and moderation?

**Student:** He is not including these types of republics because what he wants to set up under the title of republic are the peaceful and moderate—

**LS:** But, still—yes?

**Student:**<sup>51</sup> Isn’t what he is saying is that it is a principle of their success that they be basically peaceful and moderate. And, if they violate this principle, they shall cease to be good republics.

**LS:** Yes, that is the only way one can save him. Otherwise<sup>52</sup> he could not present as an “is” what for him is clearly an “ought.”

**Student:**<sup>53</sup> It would be reasonably true of the Dutch, the Swiss, and the German cities that they did not go out on Sicilian expeditions.

**LS:** Yes, but on the other hand, another republic went out on a Sicilian expedition.

**Student:** Yes, but it has to be said that the modern commercial republic [did not].

**LS:** I see. So, in other words, this needs, surely, a comment. What was historically effective was<sup>54</sup> the sweeping statement, and therefore it became necessary for the *Federalist* to discuss this in No. 6, by Hamilton:

“There have been, if I may so express it, almost as many popular as royal wars. Has not the spirit of commerce in many instances administered new incentives to the appetite both for republics and monarchies—<sup>x</sup>

You might very well read No. 6 of the *Federalist* because the opponents of the *Federalist* said that of course because this confederacy consists of republics, there can never be war between the states, i.e. between republics, and Hamilton has to meet that. Yes?

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 2, 127–28.

<sup>x</sup> Alexander Hamilton (Publius), *Federalist Papers*, edition unknown.

**Student:** I was just going to note that the title of that chapter is what a confederate government “ought” to be composed of, and that he is not merely saying “is.”

**LS:** No,<sup>55</sup> what the student said was quite right; if you understand what the principle of a republic is then there is a certain deviation from its principle when it becomes aggressive<sup>56</sup> [and] warlike. That is, I think, what he means and we will see that later.

Now let us turn to the end of chapter 3.

**Student:** Lycia?

**LS:** Yes, now he speaks of the federative republic;<sup>57</sup> this became a great theme of the Federalist papers. And, we will see what the peculiarity of Montesquieu in contradistinction to the *Federalist* is. Now, read that.

**Mr. Reinken:** “In Lycia the judges and town magistrates were elected by the common council, and according to the proportion already mentioned. In the republic of Holland they are not chosen by the common council, but each town names its magistrates. Were I to give a model of an excellent confederate republic, I should pitch upon that of Lycia.”<sup>xi</sup>

**LS:**<sup>58</sup> This is quoted in *Federalist* No. 9 and they don’t say that they agree with Montesquieu but it is quite clear that Hamilton would have preferred a federative republic in which the state governments were simply appointed by the federal government, just like a governor in a province of Canada is appointed by the central government.<sup>59</sup> So, there is no difference, in this respect, between the wishes<sup>60</sup> of Hamilton and the thought of Montesquieu. But what is the difference between the two statements on federal government? What is the characteristic feature of a federal government, as distinguished from a mere confederacy, according to the *Federalist Papers*? It is a very clear statement.

**Student:**<sup>61</sup> Isn’t it that the central government operates directly on the people?

**LS:** Exactly, only it’s “on the citizens.”

“Those ingredients which may be considered as forming the characteristic difference between a league and a government, we must extend the authority or the Union to the persons of the citizens, the only proper objects of government.”<sup>xii</sup>

Now, this clear point is never made by Montesquieu and it would be interesting to see if it was ever made before the *Federalist Papers*.

By the way, an important statement on federal government occurs in Spinoza’s *Political Treatise*; in his discussion of republics he gives a kind of idealizing description of the Dutch confederacy. But as far as I remember, there is no reference to this key point made in the *Federalist*.

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<sup>xi</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 3, 128.

<sup>xii</sup> Alexander Hamilton (Publius), *Federalist Papers*, edition unknown.

Now, read chapter 6, the first paragraph.

**Mr. Reinken:** “To preserve a state in its due force, it must have such an extent as to admit of a proportion between the celerity with which it may be invaded, and that with which it may defeat the invasion. As an invader may appear on every side, it is requisite that the state should be able to make on every side its defence; consequently it should be of a moderate extent, proportioned to the degree of velocity that nature has given to man, to enable him to move from one place to another.”<sup>xiii</sup>

**LS:** What strikes you in reading such a paragraph? It is not the first case, yes?

**Student:** Implying that according to the speed with which troops can be moved, the size of the state should be proportionate. It would be very geometrical.

**LS:** Exactly, he seeks<sup>62</sup> a formula. We had already such a case which we did not discuss, in the chapter on luxury. He also tried to find a formula for luxury, although I have forgotten now the proportion.

That is<sup>63</sup> an important ingredient of Montesquieu’s new science of politics. He has a word for that as we will see later.

Now, in the same chapter,<sup>64</sup> the<sup>65</sup> [fifth] paragraph.

**Mr. Reinken:** “The real power of a prince does not consist so much in the facility he meets with in making conquests as in the difficulty an enemy finds in attacking him, and, if I may so speak, in the immutability of his condition. But the increase of territory obliges a government to lay itself more open to an enemy.”<sup>xiv</sup>

**LS:** So, in other words, there is the superiority of defense to<sup>66</sup> attack, of peaceful to imperialist policies, from the point of view of sheer self-preservation.

Now, let us then turn to chapter 8 and see the other side. Yes?

**Student:** He doesn’t say whether the federation has to be of contiguous states or not. Could a federation be of the same sort as the city-states of Greece, and if so, wouldn’t the federation be open to far more chance of attack?

**LS:** Well, I do not quite understand you. Do you mean an alliance? That is<sup>67</sup> not a confederacy because [a] confederacy is a permanent union.

**Student:** Does there have to be a physical proximity or continuity of all the states in a confederacy? Or could the states be spread about?

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 6, 129–30.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 6, 130.

**LS:**<sup>68</sup> In the case of the Greek leagues, as you mentioned, some were separated by the sea. A number of islands could form a league.

**Student:**<sup>69</sup> Although the confederacy gains strength doesn't it expose a lot more territory to attack?

**LS:** Yes, but, on the other hand, if a given city lies very much behind the enemy lines it gives some advantage to the confederacy. But the point Montesquieu seems to make is that defense is superior to attack and therefore peaceful<sup>70</sup> [policies are] superior to imperialist policies.

Now, let us turn to chapter 8.

**Mr. Reinken:** "It was a saying of the Lord of Coucy to King Charles V 'that the English are never weaker, nor more easily overcome, than in their own country.' The same was observed of the Romans; the same of the Carthaginians; and the same will happen to every power that sends armies to distant countries, in order to re-unite by discipline and military force those who are divided among themselves by political or civil interests. The state finds itself weakened by the disorder that still continues, and more so by the remedy."<sup>71</sup>

"The Lord of Coucy's maxim is an exception to the general rule, which disapproves of wars against distant countries. And this exception confirms likewise the rule because it takes place only with regard to those by whom such wars are undertaken."<sup>xv</sup>

**LS:** "Against those who themselves have violated the rule."<sup>72</sup> In other words he still sticks to that rule—no conquest, no aggrandizement. Later on some complications will come.

Let us now read the last chapter of this book.

**Mr. Reinken:** "'Of the Weakness of Neighboring States.'

"Whensoever a state lies contiguous to another that happens to be in its decline, the former ought to take particular care not to precipitate the ruin of the latter, because this is the happiest situation imaginable; nothing being so convenient as for one prince to be near another, who receives for him all the rebuffs and insults of fortune. And it seldom happens that by subduing such a state the real power of the conqueror is as much increased as the relative is diminished."<sup>xvi</sup>

**LS:** Yes, a contemporary example?

**Student:** Russia.

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 8, 131–32.

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. IX, ch. 9, 132.

**LS:** In relation to what.

**Student:** Eastern satellites.

**LS:** Oh, no.

**Student:** China

**LS:** Yes, China. Russia was relatively stronger than pre-communist China. But it does not always depend on the good-will of the powerful state. Yes?

**Student:** The example he probably had in mind was Louis XIV's attack on Spain.

**LS:** You mean the war of succession?

**Student:** Yes, because the Spanish monarchy was effete and it made the glory—

**LS:** But, wasn't it still weaker at the end of the reign of Louis?

**Student:** But so was Louis and that is the point because if you are talking about the relative strength, Louis would have been better off if he had the pact with Spain because his glory was so much greater than Spain's.

**LS:** But the same is true of his other conquests, or attempted conquests, at least according to Montesquieu.

Now let us turn to Book X and first read the title.

**Mr. Reinken:** "Of Laws In The Relation They Bear To Offensive Force."

**LS:** Yes, and remember now that chapter 9, Book IX, also dealt with laws and the relation they have to the defensive force. But, Book IX is not a particularly legal book; it gives much more general political recommendations. The only legal part of Book IX is that part dealing with the federative republic, chapters two and three. Now he becomes much more legal or legalistic. Let us read the first chapter.

**Mr. Reinken:** "Offensive force is regulated by the law of nations, which is the political law of each country considered in its relation to every other."<sup>xvii</sup>

**LS:** Yes, "offensive force is regulated by the law of nations." Is not the defensive force also not regulated by the law of nations? He didn't say so.

**Student:** Well, in as much as it is allowed, there is no problem.

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<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. X, ch. 1, 133.

**LS:** Exactly, there is no problem. The problem that arises in connection with self-defense arises from offense.

Now let us see chapter 2.

**Mr. Reinken:** “The life of governments—”

**LS:** Of “states.”

**Mr. Reinken:** “The life of states is like that of man. The latter has a right to kill in case of natural defence: the former have a right to wage war for their own preservation.

“In the case of natural defence I have a right to kill, because my life is in respect to me what the life of my antagonist is to him: in the same manner a state wages war because its preservation is like that of any other being.”

**LS:** So, in other words, defense is<sup>73</sup> just—that doesn’t raise any question. Yes.

**Mr. Reinken:** “With individuals the right of natural defence does not imply a necessity of attacking. Instead of attacking they need only have recourse to proper tribunals. They cannot, therefore, exercise this right of defence but in sudden cases, when immediate death would be the consequence of waiting for the assistance of the law. But with states the right of natural defence carries along with it sometimes the necessity of attacking; as, for instance, when one nation sees that a continuance of peace will enable another to destroy her, and that to attack that nation instantly is the only way to prevent her own destruction.”<sup>xviii</sup>

**LS:** In other words, a preventive war undertaken with a fundamentally defensive spirit is perfectly all right. Yes?

**Student:** From what Montesquieu says here, it would seem as if a country was justified in attacking a country that might get stronger than it even if it has no reason to suspect that when the country does get stronger it will attack.

**LS:** No, but, on the basis of a general presumption based on the experience of many centuries, that is not a weak presumption.<sup>74</sup> What is the formula people prefer today?

**Student:** Pre-emptive war rather than preventive war.

**LS:** Pardon?

**Student:** Pre-emptive war, which is making war before the other.

**LS:** Yes, but that is the same thing; you think here of nuclear power and this is the same problem. But, the ordinary formula today is this: aggressive wars are strictly forbidden,

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<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. X, ch. 2, 133.

only defensive wars. And that seems to be very simple. Or, differently stated, every defensive force is just, every offensive force is unjust. So it is very simple to say who is in the right and in the wrong—who fired the first shot. That is extremely simple. What is the difficulty with this view?

**Student:** Wars of national liberation.

**LS:** Yes, for example. And also the presumption that the present state of affairs [and that] the present boundaries everywhere are justly drawn. For example, in central Europe it is a moot question whether they are justly drawn.

**Student:** Plus the ease with which you can provoke your opponent.

**LS:** Yes, well, that is another matter. This applies to all legal rule; a good mouthpiece can do all kinds of things. Yes?

**Student:** How does Montesquieu take care of unjust boundaries?

**LS:** Well, he does take care of them. But because he doesn't identify a just war with a war of defense, by implication he takes care of that.

**Student:** But he does say that a just war is one which prevents someone from attacking you.

**Another Student:** But he said it was a defensive spirit.

**LS:** Yes, he only wants to recover what has been unjustly taken. That is not too difficult. For example, the way in which the French understood the first world war; that by retaking Alsace-Lorraine they were only taking back what Germany had taken from them without consulting<sup>75</sup> the population. That is possible.<sup>76</sup>

Now the next chapter, where we come to a crucial point, and let us begin at the beginning.

**Mr. Reinken:** "From the right of war comes that of conquest; which is the consequence of that right, and ought therefore to follow its spirit.

"The right the conqueror has over a conquered people is directed by four sorts of laws: the law of nature, which makes everything tend to the preservation of the species; the law of natural reason, which teaches us to do to others what we would have done to ourselves; the law that forms political societies, whose duration nature has not limited; and, in fine, the law derived from the nature of the thing itself. Conquest is acquisition, and carries with it the spirit of preservation and use, not of destruction."<sup>xix</sup>

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<sup>xix</sup> In original: "Conquest is an acquisition, and carries with it the spirit of preservation and use, not of destruction." *Spirit of Laws*, vol. I, bk. X, ch. 3, 134.



**LS:** Now let us stop here. The most striking thing and, in a way, the most important thing is the distinction here made between the laws of nature and the law of the natural light, [which is] an old scholastic expression<sup>77</sup> we still use and which means law of reason. Now, the difference is this, as appears from this passage: The law of nature applies to all species—it is not specifically human. The law of reason applies<sup>78</sup> only to men. But it is interesting that this law of reason is no longer called the law of nature. It is not merely a terminological change but a very profound change connected with this change from a teleological understanding toward a non-teleological understanding, a point of which I have spoken before. Yes.

**Student:** I am somewhat struck as well by his distinction between the law of nature and the law derived from the nature of the thing itself.

**LS:** Well, let me translate literally and I will answer that: “finally, the law drawn from the thing itself,” that is to say, from the circumstances<sup>79</sup> [or] situation.

**Student:** But he does later use the term “*nature de la chose*.”

**LS:** Then here he [deliberately] did not<sup>80</sup> [use the term] in order not to become confused.

**Student:** He says that the law drawn from the thing itself, and then he says that conquest is an acquisition and so by virtue of being an acquisition it should be used, not destroyed. But the purpose of conquest is to prevent<sup>81</sup> someone else from attacking you, so [if] the thing itself [is] taken that way,<sup>82</sup> [the] purpose might best be served by destroying the other country.

**LS:** Well, that might be, but we can state it more cautiously and more philanthropically by saying that the fourth law, in particular (perhaps also the third) may qualify the first and the second—they do not necessarily say the same thing otherwise they would be the same laws.<sup>83</sup> The first law says that no member of a species may frivolously destroy a member of its species, whether they are men or lions or nightingales or whatever. But the second says the golden rule. But the third and fourth rules have nothing to do with that—he doesn’t say what the content is. And therefore they may surely qualify law number one, the law of nature, and law number two, the law of reason. This is safe to say. But, someone else had his hand raised. Yes, you.

**Student:** I was just wondering about that second law, it sounds quite religious—

**LS:** Not necessarily religious. What is the religious formulation?

**Student:** It just sounds like the golden rule that we should do to others—

**LS:** Yes,<sup>84</sup> that is true. The positive formulation that we should do to others what we wish to<sup>85</sup> [have done to] ourselves; whereas, the other one [is] don’t do to others what you don’t wish others to do to you. You are right, that is, at least, a higher and more comprehensive formula.<sup>86</sup> But Montesquieu is perfectly willing to accept this provided

some qualifications are permitted in practice—especially in foreign affairs—and he provides for these qualifications by speaking of these two other laws. Yes?

**Student:** I don't understand what the third law is, the law that forms political societies, and hence, I don't understand how it would regulate the behavior of a conqueror.

**Another Student:** Maybe it has something to do with the possible right of conquest, not based on any of the traditional grounds, especially the traditional ground that the aggressing state was violated,<sup>87</sup> insulted, or in any other way provoked by the state which<sup>88</sup> [it] attacks.

**LS:**<sup>89</sup> In the traditional doctrine of the just war, the just war is the one where the war-waging state has been done some injustice by the other state. But the other kind of war, called the Machiavellian war, the power-political war, was not interested in that. When they found it to their advantage to conquer, they did conquer.<sup>90</sup> Perhaps this possibility is here implied. We have first to hear him explain and expound fully his doctrine about the rights of conquest and then we can retroactively interpret this passage. Is this clear? That is, by the way, the sound procedure in all cases when you are confronted by a dark passage: consider the sequel, consider the context, and then this will throw light not only<sup>91</sup> [on] the principles, but the principles throw light on the consequences. Yes?

**Student:** It seems a little clearer from the French which goes more literally, “from the law which forms political society which are such that nature by no means has fixed an end to their duration.” One of the reasons for extirpating the characters you have just conquered would be to say that it is time for there to be no more Poles: The Polish society is ended, so we will execute all Poles. But, there is not in nature [or] in the natural history of societies, an end coming to Poles. The government may have grown corrupt but the conqueror is supposed to infuse a fresh life into that society.

**LS:** I don't believe it suggests that.

**Student:** There's an ambiguity in the English as to the meaning of the word end: does it mean goal or does it mean death?

**LS:** No, it means termination. “Nature has not limited the duration of societies”—that is what it says.

**Student:** To be relevant here though wouldn't that have to say that nature has not guaranteed—or, rather, let us say it this way, nature has not limited the duration of societies, but by the same token nature has not guaranteed that political societies must last.

**LS:** But, should he unnecessarily express it so that we have such a riddle here? I suggest that we wait for the sequel. Let us read the next paragraph.

**Mr. Reinken:** “The inhabitants of a conquered country are treated by the conqueror in one of the four following ways: Either he continues to rule them according to their own laws, and assumes to himself only the exercise of the political and civil government—”

**LS:** This is clear, this case.

**Mr. Reinken:** “—or he gives them new political and civil government; or he destroys and disperses the society; or, in fine, he exterminates the people.”

**LS:** So, this is meant to be a complete enumeration of the possibilities. Now we have to see what we should think about these possibilities. Yes?

**Mr. Reinken:** “The first way is conformable to the law of nations now followed—”

**LS:** Incidentally, that is the way Louis XIV did it when taking the eastern provinces of the German Reich; they maintained their customs and manners, only the government was now located in Versailles and no longer in Vienna.

**Mr. Reinken:** “—the fourth is more agreeable to the law of nations followed by the Romans: in respect to which I leave the reader to judge how far we have improved upon the ancients. We must give due commendations to our modern refinements in reason, religion, philosophy—”<sup>xx</sup>

**LS:** No, no, no, that must be translated differently, “to the modern times, to the present reason, to the religion of today, to our philosophy, to our manners or morals.” That is important. So here<sup>92</sup> he says something very bad about the Romans for the first time—that they followed the most inhuman procedure in [conquest according to the] law of nations<sup>93</sup>. But still, he qualifies it a bit: He says that he doesn’t give the judgment himself except in this qualified way, “our modern times, the present reason, the religion of today, our philosophy, our manners.” What strikes you in this enumeration?

**Student:** He doesn’t speak of it as “our” religion.

**LS:** Exactly, what is ours?

**Student:** Philosophy.

**LS:** And philosophy<sup>94</sup>, at that time, always [included] science<sup>95</sup>. The religion of today, which means that it is not necessarily the religion of the future—that is also implied. Now these kinds of things are familiar to anyone who has studied Machiavelli with some care. For example, in his *Prince*, he never uses the expression we, meaning we Christians, whereas, in the *Discourses* he uses the expression we, i.e., we Christians a few times, but, he also speaks of the present religion in the same sense that Montesquieu does<sup>96</sup>. So that, I think, is a very remarkable passage.<sup>97</sup>

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<sup>xx</sup> *Spirit of Laws*, vol. I, bk. X, ch. 3, 134.

In other words, no matter how critical Montesquieu may have been of the Bible, in some respects he seems to favor it, at least the New Testament. But we must see, let us read the next paragraph.

**Mr. Reinken:** “The authors of our public law—”

**LS:** Again, “our.”

**Mr. Reinken:** “—guided by ancient histories, without confining themselves to cases of strict necessity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by supposing the conquerors to be invested with I know not what right to kill: thence they have drawn consequences as terrible as the very principle, and established maxims which the conquerors themselves, when possessed of the least grain of sense, never presumed to follow. It is a plain case, that when the conquest is completed, the conqueror has no longer a right to kill, because he has no longer the plea of natural defence and self-preservation.”<sup>xxi</sup>

**LS:**<sup>98</sup> The point he makes in his whole doctrine regarding the right of conquest is<sup>99</sup> nearly identical with Locke in his *Second Treatise of Civil Government*, chapter 16.

**Student:** Now, there is no right to killing when the object of the war has been achieved—only natural defense. Is this in agreement with the Biblical tradition?

**LS:** No, not the Old Testament tradition; they were commanded to kill man, woman, [and] beast and wipe everything out.<sup>100</sup>

That he doesn’t speak here simply of our religion has its reasons. No right to extermination on the ground of idolatry, only on the ground of self-defense. That is the key point.

Now this has application to certain kinds of modern conquests.

**Student:** Well, later on he mentions the Spanish—

**LS:** Yes, exactly, he never forgets that: the conquests of Mexico and Peru.

Let us skip the next paragraph, the next two paragraphs.

**Mr. Reinken:** “There is no such thing as a right of reducing people to slavery, save when it becomes necessary for the preservation of the conquest.”

**LS:** You see, that is interesting. Yes.

**Mr. Reinken:** “Preservation, and not servitude, is the end of conquest; though servitude may happen sometimes to be a necessary means of preservation.”

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<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. X, ch. 3, 134–35.

“Even in that case it is contrary to the nature of things that the slavery should be—”

**LS:** Here he says, “to the nature.” Yes.

**Mr. Reinken:** “—the slavery should be perpetual. The people enslaved ought to be rendered capable of becoming subjects. Slavery in conquests is an accidental thing. When after the expiration of a certain space of time all the parts of the conquering state are connected with the conquered nation, by custom, marriages, laws, associations, and by a certain conformity of disposition, there ought to be an end of the slavery. For the rights of the conqueror are founded entirely on the opposition between the two nations in those very articles, whence prejudices arise, and the want of mutual confidence.”<sup>xxii</sup>

**LS:** Yes, let us stop here.<sup>101</sup> We have here a concrete case where we see that this would not necessarily follow from the law of the natural reason nor from natural law that this kind of temporary enslavement is just. That follows from the nature of the situation. The conqueror cannot enjoy his conquest if there is not a certain assimilation of the conquered people to the conquering people.<sup>102</sup> There is not a question of higher civilization of the conqueror compared with the conquered; it is only the minimum assimilation to each other which is required.

**Student:** Is, in this case, the nature of the thing itself distinguished both from the law of nature and from the light of natural reason? Is this a case in which slavery would be justified neither by the law of nature nor by the light of reason?

**LS:** Yes,<sup>103</sup> would you wish to be enslaved if only your grandchildren will be subjects, would you wish to do that?

**Student:** No.

**LS:** So, in other words, it is against the law of the natural light. And the law of the preservation of the species doesn’t say anything because there are animal species in which there are slaves—think of bees.

**Student:** But he implies that the slavery may be necessary for self-preservation—

**LS:** No,<sup>104</sup> enslavement does not run counter to self-preservation proper, because being enslaved is something different from being killed. But the positive reason [of] why [to] enslave, which is not encouraged by the law of the natural light [or] the law of reason, is still just—the reason is the interest of the conquering state.<sup>105</sup> The conquered state could<sup>106</sup> do the same thing if it had won the war, but unfortunately it has lost the war and only the conquering state’s interest can be considered. Yes.

**Student:** Are we also under heading three, namely, the law which forms political societies and has to do with customs, marriages, laws, associations, and the disposition of

<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. X, ch. 3, 135.

the people; and this is the thing which dictates such as, “all right now Welch men can be given a seat in Parliament?”

**LS:** Yes, I suppose so.

Now, let us turn to the next chapter and the title.

**Mr. Reinken:** “Some Advantages of a Conquered People.”

**LS:** Now here in this chapter he is dealing with a very important case, namely, the case of wars of liberation or of civilization; and these, of course, are for the benefit, if not necessarily solely for the benefit, of the conquered peoples. And this is a key point: today these kind of wars are frowned upon and the rule which has developed in modern times is<sup>107</sup> the simple rule of non-intervention. Another country may be tyrannized by [an] individual or a clique and may be subject to the most abominable practices,<sup>108</sup> [but] that is nobody else’s business. That is modern international law. The older view was the opposite: that intervention for the benefit of the people concerned is legitimate. The long discussion [is] in Grotius, where he marshals all the evidence from the classical writers in favor of the wars of civilization<sup>109</sup>. And, only in modern times, classically expressed in Hobbes’s notion that all states are in a state of nature with each other, i.e. equal, regardless of size etc. This is the modern view.

Now, let us see, we cannot read the whole chapter. Let us read the fifth paragraph.

**Mr. Reinken:** “A conquest may destroy pernicious prejudices, and lay, if I may presume to use the expression, the nation under a better genius.

“What good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them; but they filled their heads with a frantic superstition. They might have set slaves at liberty; they made freemen slaves. They might have undeceived them with regard to the abuse of human sacrifices; instead of that they destroyed them.”

**LS:** Yes, but what did they destroy? That is not quite clear. They did not destroy, after all, all the Indians. I believe he means that they exterminated the abuses regarding human sacrifices.<sup>110</sup> That is a very important question. Can the civilized nation—<sup>111</sup>this question is more alive today than at all times in the past—simply abolish the abominable practices it finds in the uncivilized nation? Is it not necessary to convince the people that it is good. That may very well be the meaning. The passage, as it stands, is ambiguous.

Read the last paragraph of this chapter.

**Mr. Reinken:** “It is a conqueror’s business to repair a part of the mischief he has occasioned. The right, therefore, of conquest I define thus: a necessary, lawful, but unhappy power, which leaves the conqueror under a heavy obligation of repairing the injuries done to humanity.”<sup>xxiii</sup>

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<sup>xxiii</sup> *Spirit of Laws*, vol. I, bk. X, ch. 4, 137.

**LS:** This doesn't prove that the right of conquest is not simply derived from the law of reason as stated before. It is an unhappy,<sup>112</sup> necessary,<sup>113</sup> [and] unfortunate right. The right of reason, as the time before, that we should not do to anyone else what we would not wish him to do to us, is obviously not an unfortunate nor an unhappy right. I think we have seen now that there is a very important qualification.

Let us see now in chapter 5, on Gelon, the King of Syracuse—read the whole chapter.

**Mr. Reinken:** “The noblest treaty of peace ever mentioned in history is, in my opinion, that which Gelon made with the Carthaginians. He insisted upon their abolishing the custom of sacrificing their children. Glorious, indeed! After having defeated three hundred thousand Carthaginians, he required a condition that was advantageous only to themselves, or rather he stipulated in favor of human nature.”<sup>xxiv</sup>

**LS:** Yes, contrast that with the Spaniards. That is<sup>114</sup> the point: he doesn't cross all the t's but that is the point here.

In the next chapter, the third paragraph.

**Mr. Reinken:** “If a democratic republic subdues a nation in order to govern them as subjects, it exposes its own liberty; because it intrusts too great a power to those who are appointed to the command of the conquered provinces.”<sup>xxv</sup>

**LS:** This is the answer to the question which you gave before: why are republics peaceful? They are not necessarily peaceful, if we look at them as they have shown themselves in history, but they ought to be peaceful. There is a strong reason for favoring peace in the case of republics which is absent from monarchies.

The last two chapters deal with two conquerors, one modern—Charles XII of Sweden—and one ancient—Alexander the Great.<sup>115</sup> What has this to do with the right of nations?<sup>116</sup> Right of nations is here used in a wider sense: it includes also the wisdom of the policies.<sup>117</sup> He shows first how [Alexander established] peace<sup>118</sup> and harmony between the victors, the Greeks, and the vanquished, the Persians, and [how] he accepted the manners of the Persians and did not simply destroy it.

In the third paragraph before the end.

**Mr. Reinken:** “He paid great respect to the ancient traditions, and to all the public monuments of the glory or vanity of nations. The Persian monarchs having destroyed the temples of the Greeks, Babylonians, and Egyptians, Alexander rebuilt them: few nations submitted to his yoke to whose religion he did not conform—”

<sup>xxiv</sup> *Spirit of Laws*, vol. I, bk. X, ch. 5, 137.

<sup>xxv</sup> *Spirit of Laws*, vol. I, bk. X, ch. 6, 138.

**LS:** In other words, a complete tolerance, in contradistinction to the Biblical and modern conquerors. Yes.

**Mr. Reinken:** “—and his conquests seem to have been intended only to make him the particular monarch of each nation, and the first inhabitant of each city. The aim of the Romans in conquest was to destroy, his to preserve; and wherever he directed his—”

**LS:**<sup>119</sup> You see how much he exaggerated in the case of the Romans. You remember that here the Romans were given as the example of the bad law of nations because they engaged in universal genocide, which is a gross exaggeration.<sup>120</sup> They were not as wise [or] as tolerant as Alexander.

Now, read the beginning of the next paragraph.

**Mr. Reinken:** “He committed two very bad actions in setting Persepolis on fire and slaying Clitus; but he rendered them famous by his repentance.”<sup>xxvi</sup>

**LS:** Yes, that is enough: What is the greatest, most popular example of a king who repents? King David. Even this great virtue of repentance, the pagan Alexander enjoyed.<sup>121</sup>

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<sup>1</sup> Deleted “I mean.”

<sup>2</sup> Deleted “Well.”

<sup>3</sup> Deleted “Well.”

<sup>4</sup> Deleted “now.”

<sup>5</sup> Deleted “It is very simple. Just state it. I only want you to state it.”

<sup>6</sup> Deleted “Well.”

<sup>7</sup> Deleted “of course.”

<sup>8</sup> Deleted “You referred to a book didn’t you?”

Student: *The Psychology of Religion* by Jung

LS: This is the psychoanalyst?

Student: Yes.

LS: What did he say?

Student: It mentioned that the most dangerous person in the asylum was the person who was fearful and not the person who was aggressive.

LS: I see. He should know. He had quite a few things to do with that. I don’t know.”

<sup>9</sup> Deleted “And I will do that now.”

<sup>10</sup> Deleted “LS: No that’s not it.”

<sup>11</sup> Deleted “Well.”

<sup>12</sup> Deleted “You see.”

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<sup>xxvi</sup> *Spirit of Laws*, vol. I, bk. X, ch. 14, 145–46.



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<sup>13</sup> Deleted "Period."

<sup>14</sup> Deleted "So."

<sup>15</sup> Deleted "Good."

<sup>16</sup> Deleted "in."

<sup>17</sup> Deleted "Now."

<sup>18</sup> Deleted "here."

<sup>19</sup> Deleted "Student: Honor.

LS: No.

<sup>20</sup> Deleted "Oh."

<sup>21</sup> Deleted "we can say."

<sup>22</sup> Deleted "But."

<sup>23</sup> Deleted "no;" moved "natural;" deleted "ends. And"

<sup>24</sup> Deleted "Yes."

<sup>25</sup> Deleted "

LS: Later on then?

Student: Yes, in book eleven."

<sup>26</sup> Deleted "That is."

<sup>27</sup> Deleted "that."

<sup>28</sup> Deleted "the reader."

<sup>29</sup> Deleted "another man's slave."

<sup>30</sup> Deleted "is of course more."

<sup>31</sup> Deleted "completed."

<sup>32</sup> Deleted "structure."

<sup>33</sup> Deleted "and."

<sup>34</sup> Deleted "But."

<sup>35</sup> Deleted "of course."

<sup>36</sup> Deleted "equals to."

<sup>37</sup> Deleted "Good."

<sup>38</sup> Deleted "then."

<sup>39</sup> Deleted "and."

<sup>40</sup> Deleted "vice."

<sup>41</sup> Deleted "Student: "by an internal vice."

LS: Yes, he is so squeamish [referring to the translation] and he probably would say that the vice squad should be called the imperfection squad. How do we know that it will be destroyed by an internal vice if it is too great? What is the historical evidence for that?

Student: Rome.

LS: Sure. Next paragraph please."

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<sup>42</sup> Deleted "here we see."

<sup>43</sup> Deleted "Good. Next paragraph please."

<sup>44</sup> Deleted "but."

<sup>45</sup> Deleted "of course."

<sup>46</sup> Deleted "this necessity."

<sup>47</sup> Deleted "this."

<sup>48</sup> Deleted "That."

<sup>49</sup> Deleted "I mean."

<sup>50</sup> Deleted "Yes."

<sup>51</sup> Deleted "Well."

<sup>52</sup> Deleted "he could simply say."

<sup>53</sup> Deleted "Well."

<sup>54</sup> Deleted "of course."

<sup>55</sup> Deleted "no."

<sup>56</sup> Deleted "when it becomes."

<sup>57</sup> Deleted "you know, of course, that."

<sup>58</sup> Deleted "Now."

<sup>59</sup> Deleted "Good."

<sup>60</sup> Deleted "at least."

<sup>61</sup> Deleted "Student: Isn't it the extent of the confederation into one large nation with lots of interests..."

LS: No. That is not the point."

<sup>62</sup> Deleted "for."

<sup>63</sup> Deleted "a part."

<sup>64</sup> Deleted "the fourth paragraph, no."

<sup>65</sup> Deleted "next."

<sup>66</sup> Deleted "defend against."

<sup>67</sup> Deleted "of course."

<sup>68</sup> Deleted "Well."

<sup>69</sup> Deleted "Well, then."

<sup>70</sup> Deleted "policy."

<sup>71</sup> Deleted "LS: Yes, go on."

<sup>72</sup> Deleted "So."

<sup>73</sup> Deleted "of course."

<sup>74</sup> Deleted "But."

<sup>75</sup> Deleted "with."

<sup>76</sup> Deleted "Good."

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- <sup>77</sup> Moved "which."
- <sup>78</sup> Deleted "of course."
- <sup>79</sup> Deleted "from the."
- <sup>80</sup> Moved "deliberately."
- <sup>81</sup> Changed from "But conquest has its purpose as preventing."
- <sup>82</sup> Deleted "that."
- <sup>83</sup> Deleted "You see? I mean."
- <sup>84</sup> Deleted "yes."
- <sup>85</sup> Deleted "do."
- <sup>86</sup> Deleted "Yes."
- <sup>87</sup> Deleted "was."
- <sup>88</sup> Deleted "he."
- <sup>89</sup> Deleted "Well."
- <sup>90</sup> Deleted "Now."
- <sup>91</sup> Deleted "to."
- <sup>92</sup> Deleted "you see."
- <sup>93</sup> Deleted "in," moved "conquest."
- <sup>94</sup> Deleted "means."
- <sup>95</sup> Moved "included."
- <sup>96</sup> Deleted "that."
- <sup>97</sup> Deleted "So."
- <sup>98</sup> Deleted "By the way."
- <sup>99</sup> Deleted "very."
- <sup>100</sup> Deleted "So in other words."
- <sup>101</sup> Deleted "So."
- <sup>102</sup> Deleted "Here."
- <sup>103</sup> Deleted "well."
- <sup>104</sup> Deleted "no, well."
- <sup>105</sup> Deleted "because."
- <sup>106</sup> Deleted "of course."
- <sup>107</sup> Deleted "as you know."
- <sup>108</sup> Deleted "and."
- <sup>109</sup> Deleted "and."
- <sup>110</sup> Deleted "Yes."
- <sup>111</sup> Deleted "and, by the way."
- <sup>112</sup> Deleted "a."

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<sup>113</sup> Deleted “an.”

<sup>114</sup> Deleted “of course.”

<sup>115</sup> Deleted “Now.”

<sup>116</sup> Deleted “Well.”

<sup>117</sup> Deleted “Well.”

<sup>118</sup> Changed from “how this policy establishing peace.”

<sup>119</sup> Deleted “Well.”

<sup>120</sup> Deleted “But, still.”

<sup>121</sup> Deleted “We have to leave it at this. Next time we will hear Mr. W.”

**Session 9: February 1, 1966**

**Leo Strauss:** You made some very important points. Namely, in the first place, that political liberty, which is a term occurring in the title, is to be understood in contradistinction to natural liberty; and secondly, it is also to be understood in contradistinction to what we may call moral liberty—precisely because of this definition of moral freedom.<sup>1</sup>

Now, regarding your remark on chapter 4, when he speaks of the fact that a republic is not necessarily a free state: what he means there is, in present-day language, that a republic in the classical sense is not based on a distinction between state and society. And what Montesquieu is preparing<sup>2</sup> is this distinction between state and society—the liberal state.<sup>3</sup>

The first point which you make is quite interesting, namely that by going over from the republic pure and simple to the federative republic, the issue of virtue as the principle of the republic becomes lost in a way. That one can say—he is strangely silent on virtue.<sup>4</sup>

While Montesquieu's scheme does show to a certain extent the two-fold inconvenience<sup>5</sup> to which republics are opposed, it does so with great sacrifice of republican principles. And the republic of a confederacy could never be maintained on a level equal to the ancient republics he praised in the earlier books. That is a very interesting remark.

You made the point that men without societies over them are full of fear, as Montesquieu said before. But the teaching of Montesquieu regarding war says, there seems a ready excuse for most wars. That, I think, one can say.

And, now, let us turn to our assignment. Now, this Book XI is devoted<sup>6</sup> to the separation of powers<sup>7</sup>: [the] most famous teaching of Montesquieu.<sup>8</sup> Chapter 6, dealing with the English constitution, is described by this editor<sup>9</sup> as the most famous chapter of the work, which doesn't mean that Montesquieu regarded it as the most important chapter but that it so happened after his time.<sup>10</sup>

This chapter is modeled on an earlier chapter,<sup>11</sup> Polybius' *History*, Book VI, dealing with the Roman constitution.<sup>12</sup> He never mentions Polybius here, but it is quite obvious to anyone who knows these two pieces that there is a connection. Polybius being an historian has to have an excuse for putting his description of the Roman constitution at that particular place; the excuse being that he is dealing with the second Punic war, the time when Rome was in the greatest danger, and he has to explain how come the Romans, in spite of the terrible defeats, overcame Hannibal. And the answer is the Roman constitution—therefore he puts it there.

Polybius<sup>13</sup> doesn't say anything about the separation of powers, but he speaks of something which can easily be mistaken for the separation of powers, namely, of the mixed regime. The virtue of the Roman regime was that it was a mixture of kingship,<sup>14</sup> [the consuls]; aristocracy, [the] senate; and democracy, the assemblies of the people. The idea of Polybius is this: You have a sum total of power in a society and, if you do not wish to be crushed by it, you must split it somehow. How you split it, there is no principle there; whereas Montesquieu is very much concerned with having a principle there—the executive, the legislative, and the judicial.<sup>15</sup>

As for the distinction of these three things, the classical passage occurs in Aristotle's *Politics*, Book IV. 1297b35 and following. I read it to you from Barker's translation:

"We may lay down that there are three elements or powers in each constitution and a good legislator must consider what is expedient for it under each of these three heads. The first of the three is a deliberative element, concerned with common affairs and with its proper constitution; second, is the elements of the magistracies; the third is the judicial element."<sup>1</sup>

So, here you have it: deliberative, magistracies—corresponding to the executive—and judicial. But apart from some differences such as deliberative is not the same as legislative, the main point is this: Aristotle is not concerned with a separation of powers, he is only concerned with distinguishing functions. He doesn't assert that they must be in different hands. We can say that is the original teaching of Montesquieu, while there are already important ingredients in Locke, as was pointed out by Mr. W., but this is not toward explicitly the separation of powers.

Now, what enabled Montesquieu to be original? What is his principle, in contradistinction to the principle of, say, Aristotle or of Polybius or of the other thinkers? Provisionally, we can give this answer: The principle of Aristotle which guides his whole work is virtue, there is no doubt about that as no one knew better than Montesquieu himself. This is no longer the principle for Montesquieu. What is positively the principle, Mr. W.? What induces or compels Montesquieu to develop the doctrine of the separation of the powers? For what is the separation of powers necessary?

**Student:** To protect the individual from the state.

**Different Student:** Liberty.

**LS:** No.

**Student:** Security.

**LS:**<sup>16</sup> Security of the individual. Don't forget that the seventeenth century, shortly before Montesquieu, is the age where the idea of life insurances and other insurances came into

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<sup>1</sup> Aristotle, *Politics*. Edition unknown.

being—by a great man, Leibnitz. So this security is not the guiding concern of the tradition<sup>17</sup> [but] it is very important in Montesquieu.

Now, the extraordinary thing is this<sup>18</sup>: Montesquieu finds the principle of the separation of powers in the British constitution and no Englishman had seen it before in the English constitution. This paradox permits of two solutions: the first, the separation of powers does not exist in the British constitution, which is a view apparently very common today—especially the English writer Shackleton, who is the English authority on Montesquieu, asserts that. Of course, there is the great question and the similar problem in the case of Burke, as Mr. M pointed out, namely, was the separation of powers simply absent or was it on the verge of disappearing [tape becomes very static and it is impossible to complete transcription of this thought]. That is an interesting question. But the point is that Montesquieu's English contemporaries, who wrote about him and also lead us to him, found that Montesquieu had seen the truth, that he had seen better than the Englishman himself. And later on, Blackstone<sup>ii</sup> used Montesquieu in his interpretation of the English constitution, which is<sup>19</sup> a very high compliment, that an English constitutional lawyer should sit at the feet of one of his contemporaries in order to interpret that marvel of the human mind, the British constitution. Good, this much in a way of a general introduction.

We are not very much concerned with it for the simple reason that Montesquieu does not simply identify himself with the British, as he makes clear by this funny procedure of titling chapter 6, "Of the English Constitution,"<sup>20</sup> but mentioning England only twice in the chapter<sup>21</sup>. [Moreover he] speaks always in a somewhat cagey way. He doesn't identify the House of Lords and the House of Commons but uses very abstract terms. We will see that.

Now, let us turn right away to the text. In chapter 2, he gives nine views [and] nine meanings of the word "liberty." The central one is the view that liberty is the right to wear a long beard, which is an indication of the absurdity of these kinds of views—and that goes back<sup>22</sup> to the reaction of the Russians to the reforms on the part of Peter the Great. They protested against the abolition of the beard in the name of Russian freedom. So, we can dismiss that.

Let us turn to chapter 3 and read the very first paragraph.

**Mr. Reinken:** "It is true that in democracies the people seem to act as they please; but political liberty does not consist in an unlimited freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will."<sup>iii</sup>

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<sup>ii</sup> Sir William Blackstone (1723–1780), English judge and jurist, wrote the historical and analytic treatise on the common law entitled *Commentaries on the Laws of England* (published 1765–1769).

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 3, 150.

**LS:** Yes, let us stop here for one moment. That he refers to democracies and the people right at the beginning is due to the fact that, according to a very common, popular view which we know from Plato and Aristotle, freedom belongs to democracy and a state is free if the people are free, i.e. the common people.<sup>23</sup> Montesquieu rejects this as we see.<sup>24</sup> His point is<sup>25</sup> that liberty consists in our ability to do what one ought to will, and not being compelled to do what one ought not to will.<sup>26</sup> How do we know what we ought to do?

**Student:**<sup>27</sup> If we take the next paragraph, it is identical with what the laws tell us to do.

**LS:**<sup>28</sup> Even in this paragraph he refers to that, but laws are obviously not sufficient for freedom because the laws may be very vicious or<sup>29</sup> oppressive. So one must consider that interpretation which Mr. W. implied, namely, that it means here that freedom consists in being able to do one's duty, one can say, one's moral duty and not being compelled to do what is against one's duty.

**Student:** If one goes to Book I moral duty is something given to us by the philosophers.

**LS:** Yes,<sup>30</sup> but maybe it is not necessary to have any philosophers around for knowing what is one's duty.<sup>31</sup> That is a very plausible definition of freedom. And oppression is not when you feel oppressed because some people feel oppressed when they have to pay high taxes although they are rich—that is not a good criterion. But if men are compelled to commit indecencies and are prevented from doing the decent things, then they can rightly say that they are oppressed. Freedom consists in being able to act morally and not being compelled to act immorally. A very noble notion of freedom but, as Mr. W. noted, it is only alluded to by Montesquieu, so that we know what he is doing, but he passes by. That is not his last word on the subject.

Now, let us read the next paragraph.

**Mr. Reinken:** "We must have continually present to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid he would be no longer possessed of liberty, because all his fellow-citizens would have the same power."<sup>iv</sup>

**LS:** Did you ever hear this definition that liberty is the right to do anything which the laws permit? Hobbes, chapter 21 of the *Leviathan*. Liberty is the right to do what the laws permit, but is this a necessary condition of liberty, or the necessary and sufficient, because<sup>32</sup> the laws may permit things which they ought not to permit. Somebody may permit human sacrifices for all I know; and then are these free people? That is a question.

Let us see if that will become clear in the sequel. Let us read the first paragraph of chapter 4.

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<sup>iv</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 3, 150.



Mr. Reinken: “Democracy and aristocracy are not free states by their nature.<sup>v</sup> Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power. But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go.”

LS: “Who would say it—”

**Mr. Reinken:** “Who would say it that virtue had need of limits?”<sup>vi</sup>

LS: Yes, “who would say it?” Answer: Montesquieu.<sup>33</sup> From this it becomes perfectly clear that virtue is no longer the guiding principle of that freedom; whatever freedom may mean, that is not yet clear. Virtue must be qualified by another principle; hence, it is not the highest principle. Someone raised his hand?

**Student:** I’m afraid I wasn’t able to understand that: that it might need help, that it wouldn’t be enough, that you wouldn’t rely on it—why does that mean that it has need of limits?

LS: You remember the discussion of the democracies leading to the Jesuits and leading to Plato’s *Republic* in the name of virtue. What is there left of freedom in a simple sense? So virtue as such does not lead to freedom. If you want to have freedom you must have a qualification of virtue. A simple example: It is virtuous to say always the truth. Now, let us have a society where everyone is forced to say the truth—that means that such nice institutions as censorship and very severe penalties for saying perhaps innocent lies—fiction is, after all, in a way, lying—you can go very far on that. Take any other example, in the matter of sex it is quite obvious. All kinds of very incisive scrutinies, observations, and so on would follow the rule of virtue. The most popular and vulgar example used is<sup>34</sup> that of the French Jacobins who were very much concerned with establishing the realm of virtue and they had to use the guillotine all the time because there were so many people of imperfect virtue around.

But the key point is<sup>35</sup> that liberty is something different from virtue and is, in a way, the principle governing virtue. Freedom is not necessarily in moderate states; political liberty exists not necessarily in the moderate states. Now, when is a state moderate? One can say, if no one in it is legally omnipotent—then it would be despotism, but surely not a moderate state. So, we have two or three or “n” power-holders, but they may<sup>36</sup> deny freedom to a minority.

Now, let us come to the next chapter. Yes?

**Student:** I am bothered by a particular problem in this text. It seems at this point that Montesquieu seems to be equating what one ought to do with law and it also seems that he is considering law as fundamental law rather than as administrative law.

<sup>v</sup> In original: “Democracy and aristocratic states are not in their own nature free.”

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 4, 150.

**LS:** Law, when he speaks here, means the positive law of the land and nothing like fundamental law, in the sense of natural law.

**Student:** No, I didn't mean that he meant natural law but—

**LS:** Oh, constitutional law! But there is no indication of this fact. The difficulty, and in my opinion the intentional difficulty with this remark, is<sup>37</sup> that he suggests two alternative understandings of his definition of freedom: a) freedom exists wherever there is rule of law, i.e. not arbitrary rule and b) freedom exists where the moral law and the fulfillment of the moral law is unimpaired. Both are not sufficient but they determine, as it were, the limits within which he will find the solution—because you can clearly have rule of laws without having the separation of powers. It would still be rule of law if the legislator or the executive is at the same time judge, or if judges are judges only during pleasure as distinct from good behavior. Yes?

**Student:** You referred to this concept of law as being similar to Hobbes, but Hobbes seems to say that law is contrary to [inaudible words]

**LS:** Yes, but that means that the law is silent on certain points.

**Student:** But the law can't define liberty, it can only tell you what you can't do [and] what is outside the law.

**LS:** But by telling you what you may not do it tells you tacitly what you may do. Surely, if the law does not forbid you to breathe—which I believe no law forbids—it permits you, by this very fact, to breathe. Therefore, the silence of the law gives you freedom.

That is Hobbes; read chapter 21. There is much more in Hobbes on this subject but this is the practically important point.

**Student:** You can also have rule of law without having liberty in the sense of the first definition of being forbidden to—

**LS:** Sure, for example, you can be forbidden to help the poor. Therefore, rule of law is not good enough; we must know the rule of what laws.

**Student:** But he seems more concerned with that problem, that the laws might forbid you to do what you ought—

**LS:** In a way, but I think this has to do with the fact that the pre-legal, trans-legal principle which permits him the substance to rule of laws is the security of the individual; and you can say that that is a negative principle, there is a sphere where the individual is his own master.

Let us read the first paragraph of chapter 5.

**Mr. Reinken:** “Though all governments have the same general end, which is that of—”

**LS:** He doesn’t say end, but “object.” I think he has chosen this word with some reason.

**Mr. Reinken:** “—which is that of preservation, yet each has another particular object. Increase of dominion was the object of Rome; war, that of Sparta; religion, that of the Jewish laws; commerce, that of Marseilles; public tranquility, that of the laws of China; navigation, that of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general, the pleasures of the prince, that of despotic states; that of monarchies, the prince’s and the kingdom’s glory; the independence of individuals is the end aimed at by the laws of Poland, thence results the oppression of the whole.”

**LS:** He speaks, here, of the object of the various states. In Book VIII, chapter 16, he had spoken of the end in contradistinction to the principle. Here it is clear that he doesn’t mean the principles, but something like the end (to that extent Nugent is justified). But we have already seen in discussing Book VIII, [chapter] 16, that no republic has virtue as its end. And this is<sup>38</sup> confirmed here—none of the republics mentioned<sup>39</sup> is said to have virtue as its end, nor is despotism defined here as having its end, fear; on the contrary, the pleasures of the despot [is the object of despotism]. So the object is something very different from the principle. The inference is, to repeat, that the object, the end of republics, is not virtue. Now?

**Mr. Reinken:** “One nation there is also in the world that has for the direct object of its constitution political liberty.”<sup>vii</sup>

**LS:** I.e., none of these other states mentioned before like Rome, Sparta, and so on, has political liberty as its direct object.

**Mr. Reinken:** “We shall presently examine the principles on which this liberty is founded; if they are sound, liberty will appear as if in a glass.”<sup>viii</sup>

**LS:**<sup>40</sup> We know that this nation is<sup>41</sup> the English nation, as we shall see in the next chapter. Here we find the first clearest case, the only clear case of a nation which has political liberty as its end [and] for its direct object, which does not necessarily mean its end, because the end may be the security of the individual for which political liberty is the means.

England is, of course, a modern state and this calls<sup>42</sup> for a revision of what we have learned about the ancients and the moderns.<sup>43</sup> The ancients were the ones who spoke all the time of virtue and the moderns were the ones who spoke all the time of finance, trade,

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<sup>vii</sup> In original: “One nation there is also in the world that has for the direct end of its constitution political liberty.”

<sup>viii</sup> In original: “We shall presently examine the principles on which this liberty is founded; if they are sound, liberty will appear in its highest perfection.” *Spirit of Laws*, vol. I, bk. XI, ch. 5, 150–51.

etc. Perhaps there is a connection between these low things like finance and trade and political liberty. We must wait for a long time until we get a full answer.

The title is, "Of the Constitution of England." This editor whom I use has this remark: "The very name of England is not repeated a single time in the course of the chapter, in contradistinction to other countries which are mentioned by name." What do you say to that?

**Student:** Well, he speaks once of the English—

**LS:** Twice.<sup>44</sup> He speaks once of the English and once of England. But what do you say of this remark? Let us not mince words because this man is not here so he cannot be heard. It's absolutely disgraceful that an editor, who must have proofread this in addition to ordinary reading, should say such a thing.

**Student:** His count is off.

**LS:** Yes! And this is grossly misleading or am I wrong? I believe I saw it twice.

**Student:** England is mentioned once, and the English twice.

**LS:** That is what I had thought I do not find it now. Your confirmation is sufficient.

Now, lest we are prevented from getting a full understanding of<sup>45</sup> the key points: namely, that it is the English constitution without any question and yet he is as silent as he can be about it being the English constitution. What is the reason of that?<sup>46</sup> Let me give you a few examples. Read the second paragraph from the end of this chapter.

**Mr. Reinken:** "Neither do I pretend by this to undervalue other governments, nor to say that—"

**LS:** Namely, by this praise of this particular government, the English government of which he has already spoken.

**Mr. Reinken:** "—nor to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it."

**LS:** Like the French, yes.

**Mr. Reinken:** "How should I have any such design, I who think that even the highest refinement of reason—"

**LS:** No, "that the very excess of reason."

**Mr. Reinken:** “—is not always desirable, and that mankind generally find their account better in mediums than in extremes?”<sup>ix</sup>

**LS:** Like President Eisenhower, he would also say, and many other people.<sup>47</sup>

Here he says, in order to apologize to the French republic or government for the praise of the British constitution, “the very excess of reason.” It is not<sup>48</sup> an excess of reason, according to this whole presentation. The British constitution, as presented by him, which is not identical in all points with the actual constitution, is the rational order. And therefore this funny thing, that he says it is the British constitution and he says it is not—both things are correct.

The English system is rightly understood, with some embellishment at certain points, as the rational system.<sup>49</sup> As such, it was<sup>50</sup> taught by the tradition stemming from Montesquieu—the old liberal tradition which existed in the first half of the nineteenth century which insisted on the separation of powers, etc.<sup>51</sup>

Since the point which was most neglected by Mr. W is in the following chapters, and since the meaning of these chapters is very important for what we discuss next time, I would like first to take up these four chapters.

These chapters deal, as the titles show, with monarchy.<sup>52</sup> England was the theme before and what kind of thing is England?

**Student:** Well, it was a republic in the guise of a monarchy.

**LS:** Well, all right, but with the same right we can say that it was a monarchy of sorts.

**Student:**<sup>53</sup> It called itself a monarchy—

**LS:** Yes, so it is surely a monarchy of sorts and that is perfectly defensible. This leads to the following interesting question. We have the separation of powers and that was made possible by the fact that there was a king,<sup>54</sup> the nobility, and<sup>55</sup> the commons. This would seem to show that the separation of powers is possible only in such a qualified monarchy. Therefore, he takes up the question of monarchies in general. He moves slowly toward the question: can one have separation of powers in a full-fledged republic where there are no kings<sup>56</sup> [or] nobles properly?<sup>57</sup> If I raise this question, I believe I suggest something which is very familiar to all of you, and what is that?

**Student:** The *Federalist Papers*.

**LS:** Exactly, the *Federalist* said there is no question of a triad of powers of different origins—they all are of popular origin. And that is what Montesquieu is gradually preparing for.<sup>58</sup>

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 162.

Let us first look at chapter 7, the last sentence of the first paragraph.

**Mr. Reinken:** “But hence there results a spirit of liberty—”

**LS:** Namely, in the monarchies which we know, which means, in plain English, France, in spite of the plural.

**Mr. Reinken:** “—which in those states is capable of achieving as great things, and of contributing as much, perhaps—”

**LS:** “Perhaps!”

**Mr. Reinken:** “—to happiness, as liberty itself.”<sup>x</sup>

**LS:** Yes, and there is a similar remark in the next paragraph so he makes his bow to the modern monarchy, i.e. to France, and so on.

In the next chapter “Why the Ancients did not have a clear idea of Monarchy,” the ancients did not know monarchy—he goes very far in this paragraph [and] in this chapter—except Persia, which, of course, they knew, but nowhere else—which is, of course, a gross exaggeration and not due to ignorance but his desire to make a point.

In the last paragraph of chapter 8 he speaks of the emergence of the Gothic government, as he calls it—that means the feudal government. Read only the last sentence.

**Mr. Reinken:** “Surprising that the corruption of the government of a conquering nation should have given birth to the best species of constitution—”

**LS:** “Government.”

**Mr. Reinken:** “—of government that could possibly be imagined by man!”<sup>xi</sup>

**LS:**<sup>59</sup> He finally says what he thinks. The British constitution is the best kind of government, or a specimen of the best kind of government which men could have imagined. He couldn’t have used a stronger term.

We are still dealing with monarchies. Read the<sup>60</sup> first paragraph of chapter 9.

**Mr. Reinken:** “Aristotle is greatly puzzled in treating of monarchy. He makes five species; and he does not distinguish them by the form of constitution, but by things merely accidental, as the—”

**LS:** Is this not shocking, coming from Aristotle, that anything should be accidental—virtue or vice. What he means<sup>61</sup> is this: if you have a hereditary monarchy—and, of

<sup>x</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 7, 162.

<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 8, 163.

course, you have no guarantee whatever that the descendant of the virtuous king will not be a black sheep, that is quite true, but still to say virtue and vice are accidental from a legal point of view is quite correct. The oldest son, or the next heir, whoever he may be,<sup>62</sup> is an accident: he cannot be excluded on the mere ground of character from a legal point of view. But still it is quite shocking.

The main point is in the last paragraph of chapter 9.

**Mr. Reinken:** “The ancients, who were strangers to the distribution of the three powers in the government of a single person, could never form a just idea of monarchy.”<sup>xii</sup>

**LS:** The ancients did not know the distribution of the powers in a monarchy, which means maybe they knew it in republics<sup>63</sup>.

Now let us turn to chapter 11, the last sentence.

**Mr. Reinken:** “The Greeks had no notion of the proper distribution of the three powers in the government of one person—”

**LS:** No, “they did not in no way imagine—”

**Mr. Reinken:** “—did not imagine at all the distribution of the three powers in the government of one person; they could see it only in that of many; and this kind of constitution they distinguished by the name of Polity.”<sup>xiii</sup>

**LS:** Yes, this is historically simply not true because the polity has nothing to do with the separation of powers. It is a qualified democracy—those of you who have read Aristotle know this. And, again, that is underlined: the Greeks did not know the distribution of powers in monarchy. And the question is therefore put very neatly: did anyone in classical times know of the separation of powers in republics? That we must see.

We have discussed the most important point of this section so let us return to the end of chapter 6. Yes, Mr. B.?

**Mr. B:** Does he mean to say in these chapters that because of the historical facts, because of the lack of that kind of monarchy or feudal system, that the ancients couldn't have understood what he is talking about? I mean, is this a modified historicism?

**LS:** No,<sup>64</sup> I mean what he simply says is [that] there is first this simple proposition without any proper names, the separation of the three powers is the necessary and sufficient condition for political liberty, apart from the condition which he will discuss in Book XII.<sup>65</sup> And there are no proper names,<sup>66</sup> so it happens that you find it in England.<sup>67</sup> The question is how come the sages of antiquity didn't think of it?<sup>68</sup> The superficial [but

<sup>xii</sup> *Spirit of Laws*, vol. I, bk. X, ch. 11, 164.

<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. X, ch. 11, 165.

provisional] answer<sup>69</sup> is that<sup>70</sup> the British constitution is a transformed Gothic constitution. What that means, we will take up right away.

We read the second paragraph before the end, so let us read two paragraphs backward.

**Mr. Reinken:** “As all human things have an end, the state we are speaking of will lose its liberty, will perish.”<sup>xiv</sup>

**LS:** Yes,<sup>71</sup> there is no immortal constitution and there is not even an immortal state. England will perish, just as Rome, Sparta, and Carthage have perished.

Let us move backward to the next paragraph.

**Mr. Reinken:** “In perusing the admirable treatise of Tacitus “On the Manners of the Germans,” we find it is from that nation the English have borrowed the idea of their political government. This beautiful system was invented first in the woods.”<sup>xv</sup>

**LS:** “Was found first in the forest.”<sup>72</sup> There is an enormous literature based on this suggestion. For quite some time, people believed that<sup>73</sup> in the nineteenth century. In our age, I believe that it is generally rejected. You find a discussion of that, if I am not mistaken, McIlwain’s book, either in his history of political thought in the West or in his *Constitutionalism: Ancient and Modern*.<sup>xvi</sup> No one today would ever say that.

But, what is the meaning of that?<sup>74</sup> First, it was found in the woods<sup>75</sup>. What does this suggest?

**Mr. Reinken:** Nature.

**LS:** Yes. It’s natural; because, in a way, that which is rational is the natural, according to a way of thinking which was still very powerful in Montesquieu’s age and in which he participated to some extent. You might look up<sup>76</sup> Book XXX, chapter 19, the seventh paragraph. Does anyone have it here?

[There is some confusion as to which passage Mr. Strauss was referring to, with one student finally reading the following.]

**Mr. Reinken:** “By the establishing of those laws, the German nations quitted that state of nature in which they seemed to have lived in Tacitus’s time.”<sup>xvii</sup>

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<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 161–62.

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 161.

<sup>xvi</sup> Charles McIlwain (1871–1968), scholar of Anglo-American constitutional history; author of *The Growth of Political Thought in the West* (1932) and *Constitutionalism Ancient & Modern* (1940).

<sup>xvii</sup> *Spirit of Laws*, vol. II, Book XXX, ch. 19, 197.



**LS:**<sup>77</sup> He explicitly identifies this status, which is<sup>78</sup> in a way nonsense, because it was already political according to Tacitus' description; but it was the state of nature<sup>79</sup>—in the older sense of the word, the natural status [and] the state according to nature, the perfect state.

There is also another passage which we can't read because it is too complicated, but it is in Book XVIII, chapter 23. You might also consult that.

Now, there are a few points which we must discuss and the others, which are not so terribly urgent, we must leave.

**Mr. Reinken:** "All the citizens in the several districts ought to have the right of giving their voice for choosing the representative, except those who are in such a state of baseness that they are reputed to have no proper will of their own."<sup>xviii</sup>

**LS:** You see he is not<sup>80</sup> a democrat; there is no question of universal franchise.

Now, let us read a bit later on.

**Mr. Reinken:** "In such a state—"

**LS:** Not, "in such a state," but, "always in a state."

**Mr. Reinken:** "In a state there are always persons distinguished by their birth, riches, or honors: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have, therefore, in the legislature ought to be proportioned to their other advantages in the state; which happens only when they form a body that has a right to check the licentiousness of the people, as the—"

**LS:** No, no, the "enterprises of the people." He is a very unenterprising man!

**Mr. Reinken:** "—as the people have a right to oppose any encroachment of theirs."<sup>xix</sup>

**LS:**<sup>81</sup> To which institution is he alluding here?

**Student:** The House of Lords.

**LS:** Sure, and, fundamentally, a hereditary nobility. But look what he does here. He says, there are always in a state people distinguished by birth, wealth, or honors. In other words, the upper house does not have any necessary connection with the hereditary

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<sup>xviii</sup> In original: "All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation as to be deemed to have no will of their own."

<sup>xix</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 155.

nobility. It could very well consist of the people who are the wealthiest people. That is very important. And it has to do with that movement from separation of powers in a Gothic monarchy to separation of powers in a full-fledged republic. You don't need a hereditary nobility; we will find something else. Yes?

**Student:** Hamilton and Canadian and modern British practice move toward that. Hamilton speaks of opulence for the Senate and life peers. The Senate is to be filled up with respectable old generals—

**LS:** Yes, but the key point is that, whereas the extent to which he identifies the perfect regime with the British regime, which at that time clearly had a hereditary king and a hereditary nobility, this moves away from it.<sup>82</sup>

Now, let us read the next paragraph.

**Mr. Reinken:** “The legislative power is therefore committed to the body of the nobles, and—”

**LS:** “The nobles,” now he returns to British fact.<sup>83</sup> In other words, this other element in the legislative may be hereditary nobility, but it needn't be. That is crucial.

And then he goes a step further at the beginning of the next paragraph: “the body of the nobility ought to be hereditary,” which he hadn't said before. Now, go on to the fourth paragraph from this.

**Mr. Reinken:** “The executive power ought to be in the hands of a monarch, because this branch of government, having need of despatch, is better administered by one than by many: on the other hand, whatever depends on the legislative power is oftentimes better regulated by many than by a single person.”<sup>xx</sup>

**LS:** Here again nothing is said about the monarch being hereditary. The monarch might be an elected president, or say, Roman consulates.<sup>84</sup> Later on this is brought out again.<sup>85</sup>

When he speaks of Sidney: “As in a free state,” do you have that?

**Student:** “As in a country of liberty, every man who is supposed a free agent ought to be his own governor—”

**LS:** “Every man is supposed to have a free soul.” What does he mean by this expression? What does he mean by a free soul here?

**Student:** Rule by reason.

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<sup>xx</sup> In original: “The executive power ought to be in the hands of a monarch, because this branch of government, having need of despatch, is better administered by one than by many: on the other hand, whatever depends on the legislative power is oftentimes better regulated by many than by a single person.” *Spirit of Laws*, vol. I, bk. XI, ch. 6, 155–56.

**LS:** Yes, but in the ordinary legal sense, *mentis compos*, not moronic, not insane—nothing more. That he uses the strong expression of “free soul” and alludes to this great question of the freedom; he does not presuppose here freedom of will in any sense, [but] here<sup>86</sup> means a physical sense. That is an allusion to that.

Let us turn now to the beginning and see as much as we can. Let us begin with the beginning.

**Mr. Reinken:** “In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.”<sup>xxi</sup>

**LS:**<sup>87</sup> What is the relation of these three powers? He does not simply suggest that the executive power is subject to the legislative power, does he? Let us look at Locke’s definition in paragraph 3 of the second part of *Civil Government*:

“Political power I take to be the right of making laws with penalties of death and consequently all less penalties for the regulation and preserving of property and of employing the force of the community in the execution of such laws and in the defense of the commonwealth from foreign injury, and all this only for the public good.”<sup>xxii88</sup>

Here you have making laws, the legislative power, and employing the force of the community, the execution of the laws made by the legislative, and there is something else, foreign policy which cannot be regulated by the laws of the land and where Montesquieu says it is regulated by the law of nations.

So there is no simple subordination of the executive power to the legislative power; this much is clear. Yes?

**Mr. Reinken:** “By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.”<sup>xxiii</sup>

**LS:** What is striking here is how it begins: “the prince or magistrate.” He is doing all three things. What does he mean by that, although there has to be a separation of powers?

**Student:**<sup>89</sup> Here, I think, it is the problem of separating the powers in the rule of one person, the monarch.

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<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 151.

<sup>xxii</sup> John Locke, *Civil Government*. Edition unknown.

<sup>xxiii</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 151.

**LS:** No.

**Student:** The veto is a negative legislative power.

**Another Student:** Each of the powers has a frame of sovereignty.

**LS:** Yes, that comes a bit closer but I think that the objection to the separation of powers is that it endangers the unity of government. And what he wants to make clear by this phrase is the unity of government must be preserved despite the separation of powers.<sup>90</sup>

Yes, read the next paragraph.

**Mr. Reinken:** “The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In—”

**LS:** “Security,” yes.

**Mr. Reinken:** “In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.”<sup>xxiv</sup>

**LS:** No, “one citizen need not fear another citizen.”<sup>91</sup> This is the point: the end which is served by political liberty is the security of each.

**Student:** It seems to me, from the first paragraph, that it is not separation of power but he is simply distinguishing the functions of the prince, the way Aristotle did.

**LS:** Yes, surely.

**Student:** The fact, here, that they are autonomous, I don’t see.

**LS:** Well, that is perfectly correct. The beginning could have been said by Aristotle, but, when he makes the security point, that is one which Aristotle did not make; not that he regarded it as irrelevant, but that was not the key consideration. Now we come in the fourth paragraph to the distinctive thesis of Montesquieu. Let us read that.

**Mr. Reinken:** “When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.”<sup>xxv</sup>

**LS:**<sup>92</sup> If you have tyrannical laws, but they are not executed tyrannically, then you have freedom, in a sense. I read once a study in the Harvard Law Review about a controversy between an Englishman, Hart, a law professor at Oxford and—[a student completes the thought, but inaudibly.] Yes, you have read that. And they discuss this question, how

<sup>xxiv</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 151.

<sup>xxv</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 151–52.

importantly different the situation in Germany would have been if the judges would have been permitted to judge according to the Nazi law; whereas, they were compelled by pressure from the party to be even nastier and more vicious than the Nazi legislation. You see, therefore, this doesn't mean very much so far; it only means that you will not have tyrannical executions of tyrannical laws—you will have legal execution of tyrannical laws but not more. Whether there is more in it we must see later.

Now let us see a little bit later, the second paragraph, "Everything would be lost—"

**Mr. Reinken:** "There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."<sup>xxvi</sup>

**LS:**<sup>93</sup> He uses now a broader expression for the executive, "the power to execute public resolutions." That means not merely the laws, but also a declaration of war for example, which would fall within the province of the executive.

But that is very hard to see how you can have it if you do not have three distinct bodies, as you have them if you have a hereditary king, a hereditary nobility, and the people at large. How you can have it if all three powers have the same source, say, [the] popular source—that is not yet quite clear.

Read a little bit later, three paragraphs, "Look what—"

**Mr. Reinken:** "In what a situation must the poor subject be in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations—"

**LS:** "General wills," at that time Rousseau had not sufficiently entered the British mind.

**Mr. Reinken:** "—and as they have likewise the judiciary power in their hands, every citizen may be ruined by their particular decisions."<sup>xxvii</sup>

**LS:** The particular wills are the wills applying to this or that individual who is before a court of laws.<sup>94</sup> What is the general will?<sup>95</sup> What are the general wills he speaks of?

**Student:** Resolutions to make war, etc.

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<sup>xxvi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 152.

<sup>xxvii</sup> In original: "They may plunder the state by their general determinations and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions." *Spirit of Laws*, vol. I, bk. XI, ch. 6, 152.

**LS:** No,<sup>96</sup> here more specifically. The laws! And that is<sup>97</sup> the primary meaning of the general will in Rousseau, only Rousseau gives a bit more about that.<sup>98</sup> This is the simple starting point: the general will is the law. Mr. M., you wanted to say something?

**Student:** I wanted to ask<sup>99</sup> about something you referred to before about the hereditary nobility. Much earlier, it said that the corruption of the aristocracy was the nobility becoming hereditary. Does he here in Book VIII simply mean, and I'm thinking of England, that what prevents the . . . was the ability of the nobility to continually add to its membership?

**LS:** No, he is not particularly concerned with that. You would not find a description of the British constitution, as it appears now in hindsight, and even as it was at that time, here. He selects those things which are pertinent to the theme of the separation of powers.

**Student:**<sup>100</sup> I was trying to reconcile this remark from Book VIII with the becoming hereditary as the corruption of it.

**Another Student:** But, here we see that the body of nobles must be hereditary,<sup>101</sup> who are no longer dealing with a simple government—

**LS:**<sup>102</sup> Yes, but with that combination. Although, I believe, he never speaks of mixed government. Does he? Whereas the term mixed government appears quite frequently in the *Federalist Papers*. So, if he avoids this throughout the work, which I cannot say, that would surely be a deliberate thing on his part. Perhaps we watch it while we go.

Now, let us see. He speaks now, shortly afterward, of your theme, Mr. M.

**Mr. Reinken:** “I allow indeed that the mere hereditary aristocracy of the Italian republics does not exactly answer to the despotic power of the Eastern princes. The number of magistrates sometimes moderate the power of the magistracy; the whole body of the nobles do not always concur in the same design; and different tribunals are erected, that temper each other. Thus at Venice the legislative power is in the council, the executive in the *Pregadi*, and the judiciary in the *Quarantia*. But the mischief is, that these different tribunals are of magistrates all belonging to the same body; which constitutes almost one and the same power.”<sup>xxviii</sup>

**LS:**<sup>103</sup> Now the question is, we need different bodies if you want separation of powers, but must these different bodies rule all by<sup>104</sup> [their] own right, as the nobility rules by its own right, the king by his own right, and the people by their own right?

Let us read the next paragraph.

**Mr. Reinken:** “The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people at certain times of the year,

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<sup>xxviii</sup> In original: “But the mischief is, that these different tribunals are composed of magistrates all belonging to the same body; which constitutes almost one and the same power.”

and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires.”<sup>xxix</sup>

**LS:**<sup>105</sup> He believes that the judiciary power in England is vested in the juries and he disregards the judges entirely. The judiciary power is exercised by people taken from the body of the people. Does this mean that the legislative and executive power must not be exercised by people taken from the body of people? That is a question.

He speaks later on of the importance of habeas corpus, as well as the suspension of habeas corpus. This we might read. He had shown how important habeas corpus was, and now, the qualification.

**Mr. Reinken:** “But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected citizens, who in that case would lose their liberty only for a while, to preserve it forever.”<sup>xxx</sup>

“And this is the only reasonable method that can be substituted to the tyrannical magistracy of the Ephori and to the state inquisitors of Venice, who are also despotic.”<sup>xxxi</sup>

**LS:** Yes, more literally, “and this is the only means conformable to reason.”<sup>106</sup> He mentions the reasonable only explicitly here and at the end. But the guiding thought is that all these things, the separation of powers and how they are separated, are according to reason. It is a rational public law, not merely the British public law. It only so happens that the British public law approaches the rational public law more than any other. Good. I think we must leave it at that.

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<sup>1</sup> Deleted “Yes, you made this quite clear.”

<sup>2</sup> Deleted “in a way.”

<sup>3</sup> Deleted “Good. Now, before we turn to the discussion of the assignment, I would like to say something about Mr. B.’s paper. Is Mr. B. here? Could you come to my office after class. Now, this is a very satisfactory paper and there are some points...”

<sup>4</sup> Deleted “That is quite true.”

<sup>5</sup> Deleted “namely.”

<sup>6</sup> Deleted “one can say.”

<sup>7</sup> Deleted “this.”

<sup>8</sup> Deleted “And.”

<sup>9</sup> Deleted “here.”

<sup>10</sup> Deleted “Now.”

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<sup>xxix</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 152–53.

<sup>xxx</sup> In original: “But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it forever.”

<sup>xxxi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 6, 154.

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<sup>11</sup> Deleted “we can say, namely.”

<sup>12</sup> Deleted “And.”

<sup>13</sup> Deleted “of course.”

<sup>14</sup> Deleted “counsels.”

<sup>15</sup> Deleted “Now.”

<sup>16</sup> Deleted “Security.”

<sup>17</sup> Deleted “and.”

<sup>18</sup> Deleted “that.”

<sup>19</sup> Deleted “after all.”

<sup>20</sup> Deleted “and.”

<sup>21</sup> Deleted “and.”

<sup>22</sup> Deleted “of course.”

<sup>23</sup> Deleted “And.”

<sup>24</sup> Deleted “Now.”

<sup>25</sup> Deleted “then.”

<sup>26</sup> Deleted “Now.”

<sup>27</sup> Deleted “well.”

<sup>28</sup> Deleted “Well.”

<sup>29</sup> Deleted “very.”

<sup>30</sup> Deleted “yes.”

<sup>31</sup> Deleted “Good. So”

<sup>32</sup> Deleted “again.”

<sup>33</sup> Deleted “Sure.”

<sup>34</sup> Deleted “of course.”

<sup>35</sup> Deleted “here.”

<sup>36</sup> Deleted “of course.”

<sup>37</sup> Deleted “this.”

<sup>38</sup> Deleted “of course.”

<sup>39</sup> Deleted “here.”

<sup>40</sup> Deleted “Now.”

<sup>41</sup> Deleted “of course.”

<sup>42</sup> Deleted “therefore.”

<sup>43</sup> Deleted “You remember.”

<sup>44</sup> Deleted “Well.”

<sup>45</sup> Deleted “that, of.”

<sup>46</sup> Deleted “Well.”



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- <sup>47</sup> Deleted "Now."
- <sup>48</sup> Deleted "of course."
- <sup>49</sup> Deleted "And."
- <sup>50</sup> Deleted "of course."
- <sup>51</sup> Deleted "Good."
- <sup>52</sup> Deleted "Now."
- <sup>53</sup> Deleted "Well."
- <sup>54</sup> Deleted "there was."
- <sup>55</sup> Deleted "there was."
- <sup>56</sup> Deleted "nor."
- <sup>57</sup> Deleted "Now."
- <sup>58</sup> Deleted "Now, what he does here—."
- <sup>59</sup> Deleted "Now."
- <sup>60</sup> Deleted "next paragraph, the."
- <sup>61</sup> Deleted "of course."
- <sup>62</sup> Deleted "then it."
- <sup>63</sup> Deleted "maybe they did."
- <sup>64</sup> Deleted "oh no."
- <sup>65</sup> Deleted "Good."
- <sup>66</sup> Deleted "and."
- <sup>67</sup> Deleted "And."
- <sup>68</sup> Deleted "Then."
- <sup>69</sup> Moved "but provisional;" deleted "answer."
- <sup>70</sup> Deleted "well."
- <sup>71</sup> Deleted "good."
- <sup>72</sup> Deleted "yes. Now"
- <sup>73</sup> Deleted "I mean."
- <sup>74</sup> Deleted "Now."
- <sup>75</sup> Deleted "in the forests."
- <sup>76</sup> Deleted "I don't have it here."
- <sup>77</sup> Deleted "You see."
- <sup>78</sup> Deleted "of course."
- <sup>79</sup> Deleted "it was."
- <sup>80</sup> Deleted "of course."
- <sup>81</sup> Deleted "Now."
- <sup>82</sup> Changed from "this is a moving away from it."

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<sup>83</sup> Deleted "So."

<sup>84</sup> Deleted "But."

<sup>85</sup> Deleted "Yes, good. Do you have this passage where he denies universal franchise? Do you remember where that was? Which page of the translation?"

Student: The top of page 157.

LS: Good. Now, in the preceding paragraph he mentions England."

<sup>86</sup> Deleted "he."

<sup>87</sup> Deleted "Yes, is this clear?"

<sup>88</sup> Deleted "So."

<sup>89</sup> Deleted "Well."

<sup>90</sup> Deleted "That is, I think, the point he wants to make."

<sup>91</sup> Deleted "So."

<sup>92</sup> Deleted "In other words."

<sup>93</sup> Deleted "You see."

<sup>94</sup> Deleted "And, now."

<sup>95</sup> Deleted "What is the general will?"

<sup>96</sup> Deleted "no, no."

<sup>97</sup> Deleted "of course."

<sup>98</sup> Deleted "But."

<sup>99</sup> Deleted "something."

<sup>100</sup> Deleted "Well."

<sup>101</sup> Deleted "LS: Yes!"

<sup>102</sup> Deleted "Ah."

<sup>103</sup> Deleted "Yes."

<sup>104</sup> Deleted "its."

<sup>105</sup> Deleted "Well, in other words."

<sup>106</sup> Deleted "Now."

**Session 10: February 3, 1966**

**Leo Strauss:** That was a fine paper, but it was ruined by the apprehensive way in which you read it.<sup>1</sup> I would like to ask you one point. You seem to find that Montesquieu preferred the English constitution to the Roman constitution. Is my impression correct?

**Mr. M:** I think so, yes.

**LS:** And, so, there is a certain criticism of Rome.

**Mr. M:** Yes, along with the Greeks.

**LS:** What is your explanation of this preference? This was not entirely clear to me. You referred, at a certain point, to the fact that this is a continuance of Montesquieu's subterranean criticism of classical political philosophy—the concern with the best regime, in the classical sense—but, you dropped that afterward, didn't you?

**Mr. M:** Yes, because for me it wasn't absolutely clear.

**LS:** Yes, well since you dropped it, what is your alternative, or don't you have an alternative?

**Mr. M:** Well, the problem, I think, Mr. Strauss, was that he seems to bring together philosophy with the practice.

**LS:** Yes, but every political philosopher would have to do that.

**Mr. M:** But I think his criticism of Rome was most precisely that it was founded upon a principle which would lead to slavery and would lead to domination and eventually to the corruption of the whole regime.

**LS:**<sup>2</sup> What is the peculiarity of the English constitution as presented by Montesquieu? What is the overall formula for recommending the British constitution as a masterpiece, *the* masterpiece? You don't answer this question because you don't see the most obvious thing.

**Mr. M:** Well, I think it's because the end is liberty rather than—

**LS:** Yes, but more specifically. What is the mechanism producing that?

**Mr. M:** The separation of powers.

**LS:** The separation of powers. What about the separation of powers in Rome?

**Mr. M:** They were separated to a large extent, but in the end I think by means of gaining the judicial power, the separation was destroyed.

**LS:** Forgive me for being very pedantic. How often does he mention separation of powers in the discussion—

**Mr. M:** Not at all.

**LS:**<sup>3</sup> [Yes], that speaks volumes.<sup>4</sup> We don't have apparently the right kind of separation of powers in Rome, and that is the reason why he prefers the English. But, still, why does he proceed in this round-about way; after all, no one was obliged in the eighteenth century to be an admirer of Rome. Montesquieu was, in a way, obliged to be an admirer of France, the French Monarchy, but not of Rome. Why does he do that? We have discussed this question before. Yes?

**Mr. M:** He doesn't speak of separation of powers in connection with Rome but he does talk about a man who unified the three powers.

**LS:** Yes, we will come to the details later, but, the mere fact—I mean, I was not aware of this problem when I began to restudy this section, but in retrospect, I had the feeling I had seen the separation of powers. But, I didn't check on that.

**Mr. M:**<sup>5</sup> There is a passage there, I believe, where he speaks about the people who tampered with the constitution in order to restore freedom. And, it seems that what they did was to upset the balance.

**LS:** Yes, but, freedom is, as we have learned from<sup>6</sup> chapter 2, a term which means so many things, like the right to have a beard—you know, the beatniks' conception would be part of that. But, still, this would be necessary to study. I mean you make statistics of some words, like virtue and so on, but one would also have to consider the word—he writes quite subtly, as we know.

Now, a word about Mr. M.'s paper which I found excellent. You begin as follows, Book XI, especially chapter 6, "we must proceed as Montesquieu would have us from the more general to the more particular." You refer here to what he says in the preface. Yes, that is quite true, but how do we do that? What is the most general from which you would start? Or, let us do it the other way around, we have the separation of powers and we ascend from separation of powers to its principle<sup>7</sup> [and] its reason. What is that reason?<sup>8</sup>

**Mr. M:** Security.

**LS:** Security, yes, but we can perhaps go a bit higher.

**Mr. M:** Liberty.

**LS:** No, no, that is too vague—you know, nine meanings of liberty. We know something much more specific, what is it?

**Mr. M:** Happiness.

**LS:** Oh! What is behind security?

**Mr. M:** Self-preservation?

**LS:** Self-preservation! Of course! I believe I forgot to mention that last time.<sup>9</sup>

You speak here something of Book XIII. “The thirteenth was a tax imposed [on] medieval England; hence the superstition is derived.” That is not true; the superstition is much older, it goes back to classical antiquity. And I<sup>10</sup> know this from my own studies<sup>11</sup>; there was a scholar who wrote a book in German [gives the German title] from whom I learned that thirteen is originally a lucky number, but it became also an unlucky number. So thirteen as such, being both good luck and bad luck can [be] used as the symbol for luck, for *fortuna*. This I mention only in passing.<sup>12</sup> That is really unimportant in the context of your commentary.

He deals with the beginnings or dominant subordinate passions—

**Mr. M:** I meant to say “and” subordinate.

**LS:** I see, even that I do not quite understand.

**Mr. M:** Well, there are subordinate passions as principles of—

**LS:** I see, as compared with self-preservation.

**Mr. M:** Yes,<sup>13</sup> say in a republic, there would be a passion for equality.

**LS:** But, I don’t believe that is the best expression one could think of, “subordinate.”

**Mr. M:** But, he does use it as such. I didn’t note the passage.

**LS:**<sup>14</sup> You only point out, quite correctly, the transitional character of Books IX and X. That is perfectly true.

“Books II and VIII are especially related to ancient political science—”

**Mr. M:** Books II<sup>15</sup> [through] VIII.

**LS:** “—but constitute a modification of or improvement on the older method of treating the various regimes.” Yes, this also agrees with what I have said.<sup>16</sup>

Now, chapter 12, with which today's assignment begins, continues and concludes the discussion of monarchies which began [inaudible words]. Let us begin with the fifth paragraph.

**Mr. Reinken:** "The constitution was a mixture of monarchy, aristocracy, and democracy—" <sup>i</sup>

**LS:** He doesn't say mixture: "The constitution was both monarchic, aristocratic, and democratic." But <sup>17</sup> he means by that that it was a mixed regime. And, mixed regime, we understood last time, has nothing to do with the separation of powers. <sup>18</sup> If you look at the heading: "Of the Government of the Kings or Rome, and in what Manner the three Powers were there distributed," he doesn't say separated. So, that is already an indication of the fact that the separation of powers is not too visible in the government of Rome.

But this was monarchy, and we know already from England how the separation of powers is possible in a monarchy. We are interested how separation of powers is possible in a republic and therefore we are interested in what happened in Rome after the expulsion of the kings, a subject taken up in chapter 13. <sup>19</sup>

We can say by ourselves what we know independently of Montesquieu: that if the separation of powers is to be possible in republics, there is no need for the different powers each ruling in its own right, as the king, the lords, and the people rule in England in their own right. All powers may be of popular origin—that is the thesis regarding the separation of powers as developed in the *Federalist Papers*. We cannot help thinking of that.

Let us read the first paragraph of chapter 13.

**Mr. Reinken:** "It is impossible to be tired of so agreeable a subject as ancient Rome—"

**LS:** This is a terribly sentimental man with a very poor taste [referring to the translation]; "One can never leave the Romans."

**Mr. Reinken:** "One can never leave the Romans: hence today strangers leave the modern palaces of that celebrated capital to visit the ruins—"

**LS:** "Celebrated" is also—I mean, whenever anything is florid or turgid it is Nugent and not Montesquieu.

**Mr. Reinken:** "— One can never leave the Romans: thus it is that even today in their capital, one leaves the new palaces to go look among the ruins; it is thus that the eye,

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 12, 166.

which has rested itself on the flowers of the meadows, loves to see rocks and mountains.”<sup>ii</sup>

**LS:**<sup>20</sup> He reminds us again of his earlier statement: the greatness of the ancients and the smallness of the moderns, this we are not permitted to forget.

Now, the next paragraph.

**Mr. Reinken:** “The patrician families were at all times possessed of great privileges. These distinctions, which were considerable under the kings, became much more important after their expulsion. Hence arose the jealousy of the plebeians, who wanted to reduce them. The contest struck at the constitution, without weakening the government; for it was very indifferent as what family were the magistrates, provided the magistracy preserved its authority.

“An elective monarchy, like that of Rome, necessarily supposes a powerful aristocratic body to support it, without which it changes immediately into tyranny or into a popular state. But a popular state has no need of this distinction of families to maintain itself.”<sup>iii</sup>

**LS:** The distinction of families surely includes a hereditary nobility.<sup>21</sup> In a popular state, you don’t have to have patricians in the proper sense of the term, and<sup>22</sup> [you] can have separation of powers nevertheless.<sup>23</sup>

A little bit later he says, “Rome, after the expulsion of the kings, should have become a democracy; and yet, she did not become one.” What happened in Rome instead of the democracy? What was the situation after the expulsion of the kings, the general and obvious thing? Rome was not a democracy around 400 B.C. What was it?

**Student:** An aristocracy.

**LS:** Not quite, the people had quite some power. But, what was it? What was the situation?

**Student:** A simmering civil war.

**LS:** Yes,<sup>24</sup> a constant conflict between the plebeians and the patricians.<sup>25</sup> Let us read perhaps the last paragraph of chapter 13.

**Mr. Reinken:** “The prosperity of states is frequently greater in the insensible transition from one constitution to another than in either of those constitutions. Then it is that all the springs of government are upon the stretch, that the citizens assert their claims, that friendships or enmities are formed amongst the jarring parties, and that there is a noble

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<sup>ii</sup> In original: “One can never leave the Romans: thus strangers at present leave the modern palaces of that celebrated capital to visit the ruins and thus the eye, after recreating itself with the view of flowery meads, is pleased with the wild prospect of rocks and mountains.”

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 13, 167.

emulation between those who defend the ancient and those who are strenuous in promoting the new constitution.”<sup>iv</sup>

**LS:** I read to you the chapter head from Machiavelli, *Discourses*, Book I, chapter 4: “The disunion of the plebs and the Roman senate made that republic free and powerful.” That is the point which is underlined in the whole argument<sup>26</sup>. In other words, the struggle between the plebeians and the patricians was conducive to freedom. The people could not be oppressed and the people couldn’t oppress the patricians—both were, in their way, free. But it was a struggle, as Mr. R. said, a civil war.<sup>27</sup> This is<sup>28</sup> a state of insecurity.<sup>29</sup> So we have this interesting situation. You can have freedom in the Roman, or, if you please, Machiavellian sense, but then you don’t have security. Or you have freedom in the English sense where you have security. There is no longer a possibility of poor princes being murdered in the Tower unless the syndicate establishes a branch in London. Prince Charles is very safe. Would you agree with that?

Now, let us come to chapter 14 and read the heading first.

**Mr. Reinken:** “In what Manner the Distribution of the three Powers began to change after the Expulsion of the Kings.”

**LS:** Read the first paragraph. You see, the “distribution.”

**Mr. Reinken:** “There were four things that greatly prejudiced the liberty of Rome. The patricians had engrossed to themselves all public employments whatever; an exorbitant power was annexed to the consulate; the people were often insulted; and, in fine, they had scarcely any influence at all left in the public suffrages. These four abuses were redressed by the people.”<sup>v</sup>

**LS:** “By the *people*.” He says nothing of the separation of powers, but the point of view here is<sup>30</sup> democratic—these are abuses which the people redress. Yes?

**Student:** I am not sure that he doesn’t use the word “distribution” for “separation.” I have in mind the second paragraph of chapter 1 of Book XII.

**LS:** Distribution is how the pie is being carved out, separation is setting one to dog the other.

**Student:** But he says that political liberty in the constitution arises from the distribution—

**LS:** From a certain distribution of the three powers—it is qualified.

**Student:** Was he here referring to England?

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<sup>iv</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 14, 168.

<sup>v</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 14, 168–69.



**LS:** No,<sup>31</sup> it is in the French too, “from a certain distribution,” and this certain distribution is the separation.<sup>32</sup> What we do not have is a simple statistical fact: how often does the term separation or separated powers occur in the *Spirit of the Laws*? That would be helpful. But we can safely say that he speaks of the separation of powers in chapter 5, and as far as I can see he doesn’t speak of it here.

**Student:**<sup>33</sup> If the two<sup>34</sup> [consuls], one the plebeian and one the patrician, concentrated on checking each other—that would be in the spirit of the separation of powers.

**LS:** No!

**Student:** But what happened was that each took an army and conquered—no?

**LS:** Please, let us postpone that. That is exactly the point but we come to that very soon.

Let us turn to chapter 15. That is about the decemvirs. You call them the ten men? Yes, all right ten men. Read the beginning.

**Mr. Reinken:** “‘In what Manner Rome, in the flourishing State of that Republic, suddenly lost **its** Liberty.’”

“In the heat of the contests between the patricians and the plebeians, the latter insisted upon having fixed laws, to the end that the public judgments should no longer be the effect of capricious will or arbitrary power.”<sup>vi</sup>

**LS:**<sup>35</sup> So what one could say is that the people, the *demos*, demanded a separation of the legislative and the judicial power. But it is interesting that Montesquieu does not use this expression; he only said they wanted fixed laws, and these laws had to be written down.<sup>36</sup>

In this first paragraph<sup>37</sup> when he describes the ten men he says: “Ten men in the republic had, by themselves, all the legislative power, all the executive power, all the power of judgment.” And, therefore, it was a rotten despotism. “No one, no man nor body of men, must have all powers in the state.” That we know and that was clearly contradicted by the decemvirate. “If each of the three powers is divided among two or more different men or bodies, one has separation of powers.” That is very interesting, let me see whether I can explain it to you.

The separation of powers means, strictly speaking, each of the powers is given in its entirety to a different body: the executive power is given to the king, the judicial power, according to Montesquieu in the quotation, is given to the juries—he forgets about the judges—and the legislative power is given, fundamentally, to the Parliament—the king has only a veto power and that is not decisive.<sup>38</sup>

But what Montesquieu here speaks of when speaking of Rome is that each of the three powers is divided among two or more bodies. The legislative power is not in one hand,

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<sup>vi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 15, 170.

there is the people; the executive power is not in one hand, there is the consuls; and the judicial power is not in one hand, say, popular tribunals or whatever it might be.<sup>39</sup>

<sup>40</sup>In Rome<sup>41</sup> what do we do? We have here the two bodies, the patricians and the plebeians, and the ideal solution would be that in each of the three powers both patricians and plebeians are represented. Executive, you have a patrician consul and a plebeian consul. Legislative, you have assemblies within which both the patricians and the plebeians have the vote. The same is true of the judiciary. This is<sup>42</sup> what he is trying to show throughout the discussion of Rome. As long as both patricians and plebeians participated in power, Rome was free. When only the Plebes ruled, in the more advanced stage of the disintegration, then you were on the verge of Caesarism. This is<sup>43</sup> the way I understood it. You seem to have the same view. [Referring to the student who had prepared the paper on the assignment.] Yes, Mr. M.?

**Mr. M.**<sup>44</sup> There the special word seems to be “balancing” and in chapter 18 he discusses this very point. So long as they were balanced and this partition existed—

**LS:**<sup>45</sup> The key point is this: the distribution of the three powers among these two classes is not identical with the separation of powers.<sup>46</sup> If this is the correct reading, then Montesquieu says, between his lines, that there was no separation of powers in Rome.<sup>47</sup> That wouldn’t surprise us because Rome, as Montesquieu<sup>48</sup> said, had the object of aggrandizement and not of political liberty.<sup>49</sup>

<sup>50</sup>Let us first turn to the next paragraph in chapter 15.

**Mr. Reinken:** “What a strange system of tyranny—a tyranny carried on by men who had obtained the political and military power, merely from their knowledge in civil affairs, and who at that very juncture stood in need of the courage of those citizens to protect them abroad who so tamely submitted to domestic oppression!”<sup>vii</sup>

**LS:** We need the cowardice of the citizens so that they will let themselves be ruled and they needed the courage of the citizens in order to defend them against foreign enemies. Now, that reminds [me] of Machiavelli. Machiavelli’s understanding of the freedom of Rome is this: There are various ways in which you can have a republic—and he speaks of Athens [and] Sparta, but the Roman case is most interesting—[why was] Rome such a free state for such a long time?<sup>51</sup> That is the question that Machiavelli tries to answer in his *Discourse*.<sup>52</sup> The answer is that in Rome you had a virile plebes; in Sparta you did not<sup>53</sup>. And why was the plebes so virile and why did the whole system work? Because of the co-operation between the patricians, these shrewd fellows with very far-seeing policy, and the plebes. But why was the plebes willing to do that? Because the Roman patricians were so intelligent as to give the plebeians a cut in the booty. They conquered other cities and nations [and] the plebes got new land<sup>54</sup> and so on.<sup>55</sup> That was the secret of Roman conquest and freedom at the same time. Montesquieu<sup>56</sup> knew that, of course, and he is in agreement with that.

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<sup>vii</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 15, 171.

You referred to the fact that in chapter 5 Montesquieu had said that the object of Rome was aggrandizement, and to the story in Polybius where Polybius also says that the principle of Rome was aggrandizement whereas that of Sparta was defense. One must never take these things too literally because these writers use these assertions for certain purposes. For example, of course Sparta was on the defensive, clearly at the time of the Peloponnesian War, but why? Polybius could not have failed to know that Sparta had done her aggrandizement some centuries earlier. In other words, she was a saturated power and, like a serpent, she was lying in the grass and didn't wish to be disturbed.<sup>57</sup> That doesn't mean that Sparta was more moral than Rome; it was only a matter of timing. As Winston Churchill said about the Italian attempt to take Ethiopia in 1936 in his inimitable language that this was nothing new. Some other countries—perhaps he thought also of England—had done the same thing before. But in the twentieth century it was no longer regarded as [acceptable], and so Mussolini fell victim to this twentieth century prejudice. Something is true in the same respect with Sparta<sup>58</sup>.

Now, we might read the last paragraph.

**Mr. Reinken:** “No people were so easily moved by public spectacles as the Romans. That of the impurpled body of Lucretia put an end to the regal government. The debtor who appeared in the Forum covered with wounds caused an alteration in the republic. The decemvirs owed their expulsion to the tragedy of Virginia. To condemn Manlius, it was necessary to keep the people from seeing the Capitol. Caesar's bloody garment flung Rome again into slavery.”<sup>viii</sup>

**LS:**<sup>59</sup> That seems to be an aside on the importance of spectacles in Rome.<sup>60</sup> We can say in our language, the symbolic thing played such a role. But while you read your paper, a possible explanation occurred to me. My situation is due to my reading of Machiavelli's *Discourses* which says this very briefly and has this dual aim: first, to criticize the modern world by the standard of Roman republic, and yet at the same time, to show that Rome is at the bottom<sup>61</sup>, at the origin of the modern world via the Christian church. That<sup>62</sup> goes through the *Discourses*. Therefore, he finds all kinds of Christian, Biblical Old Testament things too, in Roman history. For example, the story of the giant Gaul who was killed by a short Roman—which reminds [one] of David and Goliath. And many other things.

Now, interesting is the story of Manlius Capitolinus who is mentioned here. He was a popular leader, a patrician, but a popular leader; and [he] was thrown down from the Capitol.<sup>63</sup> The people were, of course,<sup>64</sup> very sad about the execution of their leader—and Livy speaks then. And when I read for the first time, I didn't believe my eyes. He speaks of the *sanguis*, the Latin word for blood, *sanguis* which is almost the same as *sanguis salvatoris*, of the savior. So, in other words, Machiavelli tries to give a composite picture of both Moses and Jesus by putting together a variety of Roman things which in themselves have nothing to do with the Biblical thing, but by the composition he does that.<sup>65</sup> If you read this paragraph from this point of view, I believe you will recognize something. But this only in passing.

<sup>viii</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 16, 171.

Now let us turn to chapter 16. You see how little he speaks of the separation of powers in that he speaks of each of the powers in separate chapters; legislative power in chapter 16, executive in 17, and the judiciary in 18. There is no chapter on the separation of powers in Rome; there is [instead] a chapter on each of the three powers.

In chapter 16, let us see only a few points. Read the second paragraph.

**Mr. Reinken:** “The mischief would not have been so great had the plebeians been satisfied with this success; but they also injured the patricians as citizens. When the people assembled by *curiae* or centuries, they were composed of senators, patricians, and plebeians; in their disputes the plebeians gained this point, that they alone without patricians or senate should enact the laws called *Plebiscita*; and the assemblies in which they were made had the name of *comitia* by tribes. Thus there were cases in which the patricians had no share in the legislative power, but were subject to the legislation of another body of the state. This—”

**LS:** Namely, the plebeian assembly, a purely plebeian assembly.

**Mr. Reinken:** “—This was the extravagance of liberty.”

**LS:** “A delirium of liberty.”

**Mr. Reinken:** “The people, to establish a democracy, acted against the very principles of that government.”

**LS:** Of democracy.

You see, he [Montesquieu] doesn’t have that other characteristic of Nugent’s stylistics principles—change expressions as often as you can because repetition of the same word is not the right thing; you should show that you have a rich vocabulary. Cicero called it [inaudible words] be copious with a rich vocabulary.

**Mr. Reinken:** “—it would seem that so exorbitant a power must have destroyed the authority of the senate.<sup>ix</sup> But Rome had admirable institutions. Two of these were especially remarkable: one by which the legislative power of the people was established—”

**LS:** “was regulated.”

**Mr. Reinken:** “—and the other by which it was limited.”<sup>x</sup>

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<sup>ix</sup>In original: “One would have imagined that so exorbitant a power must have destroyed the authority of the senate.”

<sup>x</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 16, 171–72.

**LS:** Yes, limited. Now, the first point: again the discord between the patricians and plebeians—he had not said anything about a discord between the nobles and commons in England. The legislative power was not entirely in the hands of the people and part of it was in the hands of the senate. That has nothing to do with the separation of powers. Separation of powers would mean that if the people are in control of the legislative, the executive and the judiciary must not be in the hands of the people, which is clearly not the case.

Now, this sentence, “The people, in order to establish democracy, shocked the very principles of democracy.” How did they do it? What causes this accusation?

**Student:** Well, they participated in more than one function.<sup>66</sup> The same people were participating in more than one function.

**LS:** No, that is not the point he means.

**Student:** Democracy would call for everybody to have a share and when they outlawed the patricians—

**LS:** Yes, at least, they excluded the patricians from this particular kind of legislative assembly. So, that is very interesting. Democracy must grant to the rich the right to vote. But, an oligarchy, i.e. a regime in which the rich rule, by definition would deny the right to vote to the poor. How come? What does<sup>67</sup> a democracy, when it comes to power, [not] do<sup>68</sup> [that] the communists would say is a true democracy<sup>69</sup>?—deprive the rich of the right to vote and some other rights too. Yes.

**Student:** Because they base their claim on the rights of men as free men and the rich are also free men.

**LS:** Yes, that is true. But, why do they not say that democracy is the government of the poor? Poor<sup>70</sup> doesn't mean beggars, it means people who have to earn a living. So, in this sense, every one of us is a poor man; I do not know any of you but it is a fair guess.

**Student:** Is it getting back to this self-preservation thing? And democracy is a security, keeping what you have?

**LS:** No, because that is already ancient usage, classical usage. Why did they not say that democracy is the rule of the poor and the rich be damned?

**Student:**<sup>71</sup> First, poverty is somewhat shameful.

**LS:** That's it,<sup>72</sup> nothing to boast about! That was, at least, the earlier view of that time, that you do not base your claim to power of government on a defect but only on an excellence. Now, to be a freeman is<sup>73</sup> an excellence because the alternative is to be a slave. That is the point. But today people frequently think, and not unreasonably, precisely the [opposite: that the] poor [and] the underprivileged [and] the disadvantaged

need some protection against the advantaged, and the basic form [by which] this protection can be achieved is by the vote. But here we see a profound difference.

Now, let us turn to the next chapter, chapter 17, and read the first two sentences.

**Mr. Reinken:** “Jealous as the people were of their legislative power, they had no great uneasiness about the executive. This they left almost entirely to the senate and to the consuls.”

**LS:** Let us keep this in mind: The executive power was almost entirely in the hands of the senate and of the consuls—to that extent we have separation of powers. If the people have the legislative power and the senate and the consuls [have] the executive, then it is so.

Now let us turn to the next two paragraphs.

**Mr. Reinken:** “Rome, whose passion was to command, whose ambition was to conquer, whose commencement and progress were one continued usurpation, had constantly affairs of the greatest weight upon her hands; her enemies were ever conspiring against her, or she against her enemies.

“As she was obliged to behave on the one hand with heroic courage, and on the other with consummate prudence, it was requisite, of course, that the management of affairs should be committed to the senate. Thus the people disputed every branch of the legislative power with the senate, because they were jealous of their liberty; but they had no disputes about the executive, because they were animated with the love of glory.”<sup>xi</sup>

**LS:** No, “because it was jealous of its glory.” We see here that there was a certain separation of powers in Rome, if we can trust Montesquieu. The legislative in the hands of the people, the executive in the hands of the senate and the consuls. But what was the motive? It had nothing to do with security, with such a bourgeois thing, but with glory. And<sup>74</sup> if you want to use another expression, they want to become rich at the expense of other people—to take away their land and their cattle and so on.<sup>75</sup> This is entirely in the spirit of Machiavelli. But Montesquieu is not a Machiavellian.<sup>76</sup> He sees certain points which Machiavelli has seen.<sup>77</sup>

There is a difference between Machiavelli and Montesquieu and it has been stated very forcefully by a French writer of the nineteenth century, Joly<sup>xii</sup>, [in his] *Dialogues in Hell* between Montesquieu and Machiavelli.<sup>78</sup> This is a political book written against Napoleon the Third where Montesquieu, the good guy, says once you have a republic it can never be destroyed and Machiavelli proves to him that if you are clever enough, you can destroy a republic; and he describes here the methods used by Napoleon the Third in becoming a French emperor. This book, incidentally, became the source for the<sup>79</sup>

<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 17, 172–73.

<sup>xii</sup> Maurice Joly (1829–1878), French satirist and lawyer best known for his *Dialogue in Hell Between Machiavelli and Montesquieu* (1864).

[*Protocols of the Sages of Zion*. With some minor qualifications<sup>80</sup> the devilish counsels of Machiavelli were imputed to the Jews by a Russian who made this other book out of it. There is an element of truth in this view that Machiavelli is a bad guy and Montesquieu a good guy. It is by no means exhaustive but Montesquieu is a more liberal man than Machiavelli, that one can safely say.<sup>81</sup>

Let us read the last paragraph [of chapter 17].<sup>82</sup>

**Mr. Reinken:** “In the earliest times, when the people had some share in the affairs relating to war or peace, they exercised rather their legislative than their executive power. They scarcely did anything else but confirm the acts of the kings, and after their expulsion those of the consuls or senate. So far were they from being the arbiters of war, that we have instances of its having been often declared, notwithstanding the opposition of the tribunes. But growing wanton in their prosperity, they increased their executive power. Thus they created the military tribunes, the nomination of whom till then had belonged to the generals; and some time before the first Punic war, they decreed that only their own body should have the right of declaring war.”<sup>xiii</sup>

**LS:** In other words, no separation of legislative and executive power; because power to declare war is part of the executive power, as we have learned.<sup>83</sup>

We come to the last and longest paragraph, or rather, [the] chapter on the judiciary. Read the first paragraph.

**Mr. Reinken:** “The judiciary power was given to the people, to the senate, to the magistrates, and to particular judges. We must see in what manner it was distributed.”

**LS:**<sup>84</sup> Now we have the distribution of the judicial power, which is something very different from the separation of the judicial power from the legislative and executive power.<sup>85</sup> This only confirms that.

The third paragraph.

**Mr. Reinken:** “Every year the pretor made a list of such as he chose for the office of judges during his magistracy. A sufficient number was pitched upon for each cause; a custom very nearly the same as that now practised in England. And what was extremely favorable to liberty was the pretor’s fixing the judges with the consent of the parties. The great number of exceptions that can be made in England amounts pretty nearly to this very custom.”

**LS:** Yes, that is the sole reference to England in the whole section.<sup>86</sup> One tiny<sup>87</sup> bit is identical in England and in Rome—regarding the judiciary, or more precisely, something like the jury system. He didn’t say anything about similarities in the legislative and executive and their separation.

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 17, 173–74.

Let us now skip a few paragraphs and read the fifth paragraph where he talks about Coriolanus.

**Mr. Reinken:** “A question was soon after started, whether the plebeians had a right to try a patrician; this was the subject of a dispute to which the impeachment of Coriolanus gave rise, and which ended with that affair. When Coriolanus was accused by the tribunes before the people, he insisted, contrary to the spirit of the Valerian law, that as he was a patrician, none but the consuls had the power to try him; on the other hand, the plebeians, also contrary to the spirit of that same law, pretended that none but their body were empowered to be his judges, and accordingly they pronounced sentence upon him.”

**LS:** So, here was a clear conflict and now what happened after Coriolanus?

**Mr. Reinken:** “This was moderated by the law of the Twelve Tables; whereby it was ordained that none but the great assemblies of the people should try a citizen in capital cases.”

**LS:** The next paragraph.

**Mr. Reinken:** “This regulation of the law of the Twelve Tables was extremely prudent. It produced an admirable balance between the body of the plebeians and the senate. For as the full judiciary power of both depended on the greatness of the punishment and the nature of the crime, it was necessary they should both agree.”

**LS:** <sup>88</sup> In other words, a cooperation of the patricians and the plebeians—that was the way the Romans solved the problem of the judiciary. That may have been very admirable, but it has no nothing to do with the separation of powers. <sup>89</sup>

In about the middle of <sup>90</sup> [the next] paragraph [you see that] the people itself judged the public crimes, i.e. the crimes against the public like high treason and so on, which <sup>91</sup> would mean that the people would have, if we trust Montesquieu, the legislative and the judiciary power. <sup>92</sup> This is somewhat qualified [in] the paragraph after that.

**Mr. Reinken:** “Here it is proper to observe what share the senate had in the nomination of the questor, (the sitting judge) that we may see how far the two powers were balanced.” <sup>xiv</sup>

**LS:** He doesn’t say, “the two powers,” but “how the powers were, in this respect, balanced,” namely, the powers of the patricians and the plebeians, not the judiciary and the legislative power. <sup>93</sup>

He mentioned before <sup>94</sup> that lifelong judges, which was <sup>95</sup> the English system—although Montesquieu speaks only of the juries, not the judges—are a danger to liberty. And Rome is, in this respect, like England. <sup>96</sup>

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<sup>xiv</sup> In original: “Here it is proper to observe what share the senate had in the nomination of the questor, that we may see how far the two powers were balanced.”



**Mr. Reinken:** “At Carthage the senate of the hundred was composed of judges who enjoyed that dignity for life. But at Rome the pretors were annual; and the judges were not even for so long a term, but were nominated for each cause.”

**LS:** In other words,<sup>97</sup> for each [case], like you have with the juries. Yes.

**Mr. Reinken:** “We have already shown in the sixth chapter of this book how favorable this regulation was to liberty in particular governments.”

**LS:** “In certain governments.”<sup>98</sup> No lifelong judges, we know that already. This is also a vague reference to England, although the veiling is not particularly thick because everyone knows what he is speaking about [in] chapter 6, Book XI. But still, when he makes this simple game it is not uninteresting.<sup>99</sup> He wants to remind us of this fact, that there is something concealed here.

Now, let us turn to the paragraph after the next.

**Mr. Reinken:** “It is necessary to observe that the three powers may be very well distributed in regard to the liberty of the constitution, though not so well in respect to the liberty of the subject.”

**LS:**<sup>100</sup> This is<sup>101</sup> a remark which comes closest to the separation of powers in this whole part of Book XI. But he doesn’t say separated, he says they were distributed. But at least he speaks of the three powers which is a kind of relief after we have been waiting for that for all<sup>102</sup> [this] time.<sup>103</sup>

Now let us read the rest of this paragraph.

**Mr. Reinken:** “At Rome the people had the greatest share of the legislative, a part of the executive, and part of the judiciary power; by which means they had so great a weight in the government as required some other power to balance it. The senate, indeed, had part of the executive power, and some share of the legislative; but this was not sufficient to counterbalance the weight of the people. It was necessary that they should partake of the judiciary power: and accordingly they had a share when the judges were chosen from among the senators. But when the Gracchi deprived the senators of the judicial power, the senate were no longer able to withstand the people. To favor, therefore, the liberty of the subject, they struck at that of the constitution; but the former perished with the latter.”<sup>xv</sup>

**LS:** Namely, the liberty of the subject means the security of the individual, however poor. That is one thing.<sup>104</sup> You can have that as these noble Romans tried to do, but if you are not careful you may destroy public liberty.

Today we know that. It is only called by different terms: a possible conflict between freedom and social security. If you want to have the maximum of social security, you can

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<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 18, 174–78.

have it, or, at least, you can hope to get it by centralization of power, enormous power [which is] not limited by anything else. Then you have security for each individual, at least that is the promise. But of course [there is] no longer freedom.

Montesquieu seems to confuse us by using the same word, “freedom,” in both cases—freedom of the constitution and freedom of the citizen.<sup>105</sup> I ask you on the basis of this paragraph, again, was there a separation of powers in Rome? I believe not! Because what he describes is what Polybius describes,<sup>106</sup> [and he] never speaks of the separation of powers. [LS goes to blackboard.]

You have<sup>107</sup> the mass of power available in Rome and you divide it:<sup>108</sup> [give] one part to the people and the other part to the patricians. Whether these are judicial, legislative, or executive powers that you give to either, who cares! The main point is that the sum total power is not in one hand.<sup>109</sup> That is<sup>110</sup> the way he understands it. Yes?

**Student:**<sup>111</sup> You seem to imply that the power in its entirety must never be granted to one body and yet, in his discussion of the English constitution, there are the two houses of the legislature—

**LS:** I know. Surely. Montesquieu is not apparent. He does not say that you must give here the executive and he has nothing whatsoever to do with the legislative. And the legislative has nothing whatever to do with the judiciary. He makes qualifications according to the British constitution. The House of Lords has certain judicial powers, he points out<sup>112</sup>. But still, the principle is nevertheless—it is not sufficient to simply split up the sum total of governmental power into a number of parts, this division must follow a principle and the principle being that legislative power, executive power, and judicial power must not be in the same hands. If you re-read chapter 6, you will see that I am right. And also, the executive, the king, has a veto power, [which] is a kind of participation in legislative power. He doesn’t say that they must not know each other, [in fact] they must co-operate in a way. And yet, fundamentally the principle is separation. Mr. M?

**Mr. M:** I think he is right about the mass of power in one body, but isn’t it possible that this slight sharing is intrinsic to the principle—that is, each body having a hand in the other? Because he does make quite a point of it.

**LS:**<sup>113</sup> In chapter 6, you mean.

**Student:** Yes.

**LS:** Yes! There is no doubt, but still, I will go back to the very simple observations from which we started. That in these discussions of the Roman order, there is no explicit mention of the separation of powers.<sup>114</sup> We have heard a bit<sup>115</sup> [about] the distribution of each of the powers among the senate and the people, but we have not heard anything of the separation. And the only allusions to the great theme of chapter 6 is the one which we read now—the three powers may be distributed—*distributed*, not separated.

**Student:** My question really was, would he believe in the principle that the separation should be complete?

**LS:**<sup>116</sup> That is not feasible, as is also made very clear in the *Federalist* papers. A complete separation is impossible. But the main point [is] that the legislators—the men who make the laws—should not execute the laws, i.e. should themselves be subject to the laws. That is the point.<sup>117</sup>

The city of Westminster can make a law, and<sup>118</sup> if they were not subject to it, what kind of terrible things they might do. But they go home and they have to pay the same taxes they impose on everybody else—to say nothing of other unpleasant laws which they might have made. And<sup>119</sup> again, the judges.<sup>120</sup> If the legislators hate a certain man or a certain group of men and make a law accordingly,<sup>121</sup> they will not be the judges. The judges will be other people. The judges may very well be people who do not hate them, that minority. I think he takes the principle very seriously; he only would oppose a rigid and pedantic separation so that they don't look at each other ever, which<sup>122</sup> would be impossible as we know.<sup>123</sup>

I have no doubt that perhaps one could say that what comes out eventually is Polybius' view rather than Montesquieu's view, i.e. a mixed regime rather than separation of powers. That could be, but I can only say that was not Montesquieu's intention. Then you have to engage in a certain criticism of Montesquieu. That is possible but we are now concerned with what he meant and I believe he meant this quite seriously. Yes?

**Student:** I would formulate it this way: he is actually, in his philosophy of power, more interested in a balance of power and I think that this principle is the high principle of whichever way you do it, whether by separation of powers—

**LS:** Well, I beg to differ. If he had only the sections on Rome, we would say you are right.

**Student:** He is saying that Rome was successful because it did balance power.

**LS:** I know, but the question is whether this does not imply a critique of Rome, as the Romans hadn't seen this point because they were concerned with aggrandizement rather than security. Or, more exactly, the object of the Roman state was aggrandizement—and not political liberty; which is the object of Great Britain, and therefore Great Britain is preferable to Rome.

**Student:** You speak of the Machiavellian aspect—

**LS:** Yes,<sup>124</sup> but while Montesquieu is not thinkable without Machiavelli, he is not Machiavelli. None of these great successors, and in a way, pupils of Machiavelli—Hobbes, Locke, and Montesquieu and so on—were simply Machiavellians. That was too tough a medicine brewed by Cesare Borgia in his hellish kitchen and they wanted to be

nice guys, even Hobbes! I once compared Hobbes, to show you how nice a guy he is, to Sherlock Holmes and Machiavelli to Moriarty.

Now, one more point. Here in the next paragraph, in the fourth paragraph before the end, he mentions virtue. I believe that is the sole mention of virtue in today's assignment, if not in the whole<sup>125</sup> [of] Book XI.

The end of chapter 18 is a very severe indictment of the knights who were the financiers of Rome<sup>126</sup>—they must not be in possession of the judiciary powers. He is very emphatic about that.<sup>127</sup>

Now, let us look for a moment at chapter 19. Let us read the second paragraph.

**Mr. Reinken:** “While Rome extended her dominions no farther than Italy, the people were governed as confederates, and the laws of each republic were preserved. But when she enlarged her conquests, and the senate had no longer an immediate inspection over the provinces, nor the magistrates residing at Rome were any longer capable of governing the empire, they were obliged to send pretors and proconsuls. Then it was that the harmony of the three powers was lost.”

**LS:** This “harmony” of the three powers.<sup>128</sup> The separation of powers is meant, in a way, to be a harmony, but he speaks here only of harmony, not separation. Go on.

**Mr. Reinken:** “The persons appointed to that office were intrusted with a power which comprehended that of all the Roman magistracies; nay, even that of the people. They were despotic magistrates, extremely well adapted to the distance of the places to which they were destined. They exercised the three powers—”<sup>xvi</sup>

**LS:** Yes, that is all. So, this is another reference to the three powers. So, we should not forget this question<sup>129</sup>.

Now the question which I addressed to Mr. S. in our brief discussion is why is Montesquieu so cagey, if I may use this slightly vulgar word, on the separation of powers in Rome? I think we have answered this question in a general way before. He hesitates to criticize Rome. He hesitates to sever the umbilical cord connecting him with Rome, with the ancients, [and] with virtue, however dubious he was about the quality of Rome's virtue, and for that matter, of Spartan virtue. But still, he accepted this myth,<sup>130</sup> because he had linked it up in his mind with the whole problem of virtue. He did not deny<sup>131</sup> that there is such a thing as moral virtue, but he saw in it a great theoretical problem.

One last word on the last chapter, which has a beautiful title.

**Mr. Reinken:** “The End of this Book.”

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<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 19, 180.

**LS:** Yes, who writes such book titles. I think Laurence Stern comes closest to that. Read it please.

**Mr. Reinken:** “I should be glad to inquire into the distribution of the three powers, in all the moderate governments we are acquainted with, in order—”

**LS:** “Which we know,” a phrase which he had used before. “The monarchies which we know,” and he meant France in spite of the plural. Yes.

**Mr. Reinken:** “—in order to calculate the degrees of liberty which each may enjoy. But we must not always exhaust a subject, so as to leave no work at all for the reader. My business is not to make people read, but to make them think.”<sup>xvii</sup>

**LS:** Yes, that is a beautiful sentence, isn’t it? And a true sentence. But, it is also a shrewd sentence. He doesn’t wish to cross all the t’s regarding the degrees of liberty available in France at his time.<sup>132</sup>

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<sup>1</sup> Deleted “Now there was one very minor point [inaudible] but that is trivial. Now.”

<sup>2</sup> Deleted “Yes, may I, more simply perhaps.”

<sup>3</sup> Deleted “Uh huh!”

<sup>4</sup> Deleted “So.”

<sup>5</sup> Deleted “Well.”

<sup>6</sup> Deleted “Montesquieu.”

<sup>7</sup> Deleted “to.”

<sup>8</sup> Deleted “

Student: What is the reason for separation of powers?

LS: Yes, for the sake of what do we want separation of powers?”

<sup>9</sup> Deleted “Let me see here.”

<sup>10</sup> Deleted “no doubt.”

<sup>11</sup> Deleted “but.”

<sup>12</sup> Deleted “So.”

<sup>13</sup> Deleted “well, but.”

<sup>14</sup> Deleted “I see.”

<sup>15</sup> Deleted “to.”

<sup>16</sup> Deleted “Let me see, there was another point. You use the word “eclectic” also in a manner which is not immediately intelligible to me, but, of course, on reflection I understood it. But, that is trivial.

Now, let us turn immediately to today’s assignment. Mr. U., did I give you an opportunity to say what you wanted to say?

Student: Yes, I was just referring to your point about the separation and my point was that the opposite was meant.

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<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 20, 182.

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LS: Oh, we will come to that. We will come to that. I thought I had inflicted an injustice upon you.”

<sup>17</sup> Deleted “of course.”

<sup>18</sup> Deleted “And, now.”

<sup>19</sup> Deleted “Now.”

<sup>20</sup> Deleted “So, in other words.”

<sup>21</sup> Deleted “So.”

<sup>22</sup> Deleted “as we know, we.”

<sup>23</sup> Deleted “Good.”

<sup>24</sup> Deleted “surely.”

<sup>25</sup> Deleted “Now the question is...”

<sup>26</sup> Deleted “as you have seen.”

<sup>27</sup> Deleted “Now.”

<sup>28</sup> Deleted “of course.”

<sup>29</sup> Deleted “And.”

<sup>30</sup> Deleted “of course.”

<sup>31</sup> Deleted “no.”

<sup>32</sup> Deleted “It is the separation? LS: Yes.”

<sup>33</sup> Deleted “One of the ideas of the two counsels.”

<sup>34</sup> Deleted “counsels.”

<sup>35</sup> Deleted “Good.”

<sup>36</sup> Deleted “Now.”

<sup>37</sup> Deleted “we cannot read the whole.”

<sup>38</sup> Deleted “To repeat: The separation of powers means that each of the powers is given in its entirety to a different body.”

<sup>39</sup> Deleted “This, I believe, we must understand.”

<sup>40</sup> Deleted “The simplest case.”

<sup>41</sup> Deleted “of course.”

<sup>42</sup> Deleted “I believe.”

<sup>43</sup> Deleted “I believe.”

<sup>44</sup> Deleted “I was just going to ask that.”

<sup>45</sup> Deleted “But.”

<sup>46</sup> Deleted “And.”

<sup>47</sup> Deleted “And.”

<sup>48</sup> Strauss said “Socrates” but meant “Montesquieu.”

<sup>49</sup> Deleted “Good.”

<sup>50</sup> Deleted “Now, let us see.”

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<sup>51</sup> Changed from “How come that Rome was such a free state for such a long time?”

<sup>52</sup> Deleted “And.”

<sup>53</sup> Deleted “not as in Sparta where you did not have it.”

<sup>54</sup> Deleted “and so on.”

<sup>55</sup> Deleted “And.”

<sup>56</sup> Strauss said “Machiavelli” but meant “Montesquieu.”

<sup>57</sup> Deleted “And.”

<sup>58</sup> Deleted “in the way in which I stated it.”

<sup>59</sup> Deleted “Yes.”

<sup>60</sup> Deleted “As it were.”

<sup>61</sup> Deleted “and.”

<sup>62</sup> Deleted “I think.”

<sup>63</sup> Deleted “But when you read it in Livy—and.”

<sup>64</sup> Deleted “very.”

<sup>65</sup> Deleted “And.”

<sup>66</sup> Deleted “LS: Pardon?”

<sup>67</sup> Deleted “not.”

<sup>68</sup> Deleted “what.”

<sup>69</sup> Deleted “namely.”

<sup>70</sup> Deleted “of course.”

<sup>71</sup> Deleted “Well.”

<sup>72</sup> Deleted “that’s it.”

<sup>73</sup> Deleted “of course.”

<sup>74</sup> Deleted “you can also.”

<sup>75</sup> Deleted “So.”

<sup>76</sup> Deleted “But.”

<sup>77</sup> Deleted “Incidentally, the relation of Machiavelli.”

<sup>78</sup> Deleted “And.”

<sup>79</sup> Deleted “*Prodigals*.”

<sup>80</sup> Deleted “this was.”

<sup>81</sup> Deleted “Good. Where were we now?”

<sup>82</sup> Deleted “Student: The last paragraph of chapter 17?”

LS: Please, “In the first times, when the people etc.”

<sup>83</sup> Deleted “Let me see, there a was a point. Now.”

<sup>84</sup> Deleted “You see.”

<sup>85</sup> Deleted “So.”

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<sup>86</sup> Deleted “in other words.”

<sup>87</sup> Deleted “wee.”

<sup>88</sup> Deleted “You see.”

<sup>89</sup> Deleted “Later on, it the next paragraph.”

<sup>90</sup> Deleted “that.”

<sup>91</sup> Deleted “of course.”

<sup>92</sup> Deleted “But.”

<sup>93</sup> Deleted “Now, let us skip quite a few paragraphs, three paragraphs.

Student: “It is necessary to observe that the three powers may be very well distributed in regard to the liberty of the constitution, though not so well in respect to the liberty of the subject. At Rome—”

LS: I am sorry, well that is not important.

<sup>94</sup> Deleted “I mention this only in passing.”

<sup>95</sup> Deleted “of course.”

<sup>96</sup> Deleted “Let me see, where did I find that?”

Student: Two paragraphs back.

LS: Yes, read that.”

<sup>97</sup> Deleted “you know.”

<sup>98</sup> Deleted “yes, Good.”

<sup>99</sup> Deleted “I mean.”

<sup>100</sup> Deleted “Yes.”

<sup>101</sup> Deleted “I believe.”

<sup>102</sup> Deleted “the.”

<sup>103</sup> Deleted “That is good.”

<sup>104</sup> Deleted “But.”

<sup>105</sup> Deleted “Now.”

<sup>106</sup> Deleted “who.”

<sup>107</sup> Deleted “as it were.”

<sup>108</sup> Deleted “split it.”

<sup>109</sup> Deleted “Yes.”

<sup>110</sup> Deleted “at least.”

<sup>111</sup> Deleted “Well.”

<sup>112</sup> Deleted “and so.”

<sup>113</sup> Deleted “Where?”

<sup>114</sup> Deleted “And.”

<sup>115</sup> Deleted “of.”

<sup>116</sup> Deleted “Well.”



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<sup>117</sup> Deleted “You know.”

<sup>118</sup> Deleted “if the.”

<sup>119</sup> Deleted “then.”

<sup>120</sup> Deleted “So.”

<sup>121</sup> Deleted “but.”

<sup>122</sup> Deleted “of course.”

<sup>123</sup> Deleted “Yes?”

Student: There was a nice trace of that in Winston Churchill’s burial, the barons of the black [ ] had to conceal their bonds of office when the queen entered the abbey. The executive power mustn’t look on the symbols of the power of the ...

LS: Yes, yes, that is mere symbolism.

Student: I think the substance of the gentleman’s question was that, given the three powers, each to its own proper body, still that does not exclude further subdividing the powers.

LS: No.”

<sup>124</sup> Deleted “yes, sure.”

<sup>125</sup> Deleted “eleventh.”

<sup>126</sup> Deleted “and.”

<sup>127</sup> Deleted “Good.”

<sup>128</sup> Deleted “Now.”

<sup>129</sup> Deleted “but, not to the separation of powers.”

<sup>130</sup> Deleted “we can say.”

<sup>131</sup> Deleted “of course.”

<sup>132</sup> Deleted “Yes?”

Student: The translation of chapter 19, the third paragraph is terrible, it’s horrible.

LS: Yes, yes. we know. It is one of the most disgraceful things that no Englishman or American has taken the trouble, after this old man Nugent in the 18th Century, to make a new translation of the *Spirit of the Laws*. I am sure David Lowenthal is preparing one, but, God knows when he will have finished it.

So, next time Mr. R. will read the paper.”

**Session 11: February 8, 1966**

**Leo Strauss:** I would only like to ask you two things now and then we take the issues as they come up.

Regarding the distinction of liberty<sup>1</sup> [of the] constitution and liberty of the citizen, you may have liberty of the constitution without having liberty of the citizen. Is this correct?

**Student [presumably Mr. Schaefer, who is identified as the reader of a paper in this session]:** Yes.

**LS:** What about the reverse? Can you have liberty of the citizen without having liberty of the constitution?

**Same Student:** As I understand it, liberty of the constitution refers merely to what is ordained as right and liberty of the citizen refers to the real liberty which exists in fact. Therefore, you can have liberty of the citizen as a result of the manners of the prince and the particular civil laws and so forth, even though the constitution itself doesn't seem to ordain that kind of liberty.

**LS:** Mr. C. doesn't believe that.

**Student:**<sup>2</sup> My understanding was that the liberty of the people could be regardless of the constitution, manners, and morals.

**LS:** Then you agree with him.

**Student:** He was saying that the constitution allows and ordains such.

**LS:** No. The question was very simply this: you may have liberty of constitution without having liberty of the citizen. That was fundamentally the case in Rome. But the question is, can you have liberty of the citizen without having liberty of the constitution?<sup>3</sup> Both of you seem to say yes.

**Student:** But on different grounds.

**LS:** Yes, but<sup>4</sup> I doubt that you can have liberty in any—in other words, liberty of the citizen must be added to the liberty of the constitution in order to have liberty. You cannot have liberty of the citizen without liberty of the constitution. And the reason is very simple, because if you say you have liberty when you may do what the law permits and [what is] accepted by a popular majority, that law may be very stringent and very severe, foolishly and viciously severe. That is not guaranteed by the separation of powers. That is guaranteed only by a decent penal law. This is, I think, what he means. Yes?

**Student:** I think the remark—although I haven't read chapter 19 yet—that liberty is brought into being, is given birth by man's immoral[ity], would implicate that the law is only favorite—

**LS:** Yes, we will come to that passage. But<sup>5</sup> [in general], Montesquieu believes very much in something with teeth in it, and this is rather laws than manners, however important manners may be. Mr. S.

**Student:** Well, that would only indicate that you had a state with personal liberty but no liberty of the constitution, and the personal liberty was insecure and might change.

**LS:** Precarious, yes.

**Same Student:** But it does indicate that a non-liberal constitution has to have strict laws also.

**LS:** No,<sup>6</sup> the point is that it is merely an accident. If you happen to have a gentle fellow on the throne, that might happen. But there is no essential connection. Yes?

**Same Student:** I was going around that paragraph. When he speaks of the constitution which is free by right—<sup>7</sup>where you have a free people that is not a dejected people—they ought to have a free constitution. But this is like having a despotism.

**LS:** Let us come to that.

So, there is only one more point I want to bring up. When you spoke of laws that are regarding crimes against morals, and you noted, apparently with some surprise, that Montesquieu speaks here only of sexual matters. What would you have expected him to deal with in this connection?

**Same Student:**<sup>8</sup> It would seem [that] if you divide the laws up as he takes it, there is no section, out of these four sections, which would refer to laws that are designed, with regard to the general character of the people, to promote people who are virtuous.

**LS:**<sup>9</sup> That would be laws regarding education. But the question is that here he is speaking of penal law, and what do you regard as the penal law regarding subjects, regarding education? If the citizen or his children do not participate properly in the educational process, did you mean that?

**Same Student:** No, once you draw the distinction between education and that.

**LS:** Yes, but they may very well be connected; in fact, there are connections if there is an obligation to go to school, then you are punished if you play hooky, as you must know from the fate of some of your fellow scholars.

Thank you very much. Now, let us turn to Book XII and begin at the beginning. It begins with a remark by this editor, perhaps you read it.

**Mr. Reinken:** “Books eleven and twelve treat political liberty in its relations with the constitution; that is, the separation of powers, and in its relations with the citizen; these are those public liberties, the liberty of the individual in relation to the state. The distinction is exact. Treatises of constitutional law today divide themselves into two large parts, the study of the constitution, that is to say, the organization of the state, and that of the personal liberty of the citizen, the rights of man.”<sup>i</sup>

**LS:** That’s all we want. So, in other words, in retrospect he is quite right. The subject of Book XII is the rights of man. But<sup>10</sup> this is not quite true because, say, the civil liberties are not as such subjects of the penal law. There may be penal laws regarding the violation of civil liberties but not in themselves. Here, therefore, he uses hindsight.

But one point in his remark is of some use. Is not Book XII, more clearly than Book XI, concerned with the natural right of man? That we must keep open as a question.

Now let us read the first two paragraphs of the first chapter.

**Mr. Reinken:** “It is not sufficient to have treated of political liberty in relation to the constitution; we must examine it likewise in the relation it bears to the citizen.

“We have observed that in the former case it arises from a certain distribution of the three powers; but in the latter, we must consider it in another light. It consists in security, or in the opinion people have of their security.”<sup>ii</sup>

**LS:**<sup>11</sup> Is this satisfactory to you? Let us look at Book XI, chapter 6, paragraph 3.

**Mr. Reinken:** “The political liberty of the citizen is a tranquility of mind arising from the opinion each person has of his security.”<sup>iii</sup>

**LS:** Yes, that is it. In other words, the opinion of each regarding his security is also *the* root of the liberty of the constitution. So, the distinction is not quite clear. That is not to say that the distinction which he makes is meaningless, but it is not quite clear what its foundation is.<sup>12</sup> It is simpler to say that the distribution of powers, which makes sure that the legislator is not the judge,<sup>13</sup> [in] no way protects you against cruel and unusual punishments, because the laws compel the judge, if you have committed the act, to punish you cruelly and unusually. And this is prevented by the provisions stated in Book XII. This<sup>14</sup> is clearer than what he explicitly said.

Now let us read the two next paragraphs.

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<sup>i</sup> Place of quote unknown.

<sup>ii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 1, 183.

<sup>iii</sup> In original: “The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety.” *Spirit of Laws*, vol. I, bk. XI, ch. 6, 151.

**Mr. Reinken:** “The constitution may happen to be free, and the citizen not. The citizen may be free, and not the constitution.<sup>iv</sup> In those cases, the constitution will be free by right, and not in fact; the citizen will be free in fact, and not by right.”<sup>v</sup>

**LS:**<sup>15</sup> Here he says explicitly the opposite of what I said. You can have each by itself. But the question is, is this a provisional statement or is this his last word on the subject?

If we have that gentle prince, then the citizen will be free in fact, but not in right because the king may change his mind. In the other case, in a democracy let us say, which inflicts severe and cruel and unusual punishments, the citizen is free in right, because he is a member of the sovereign body, but not in fact, because of these beastly punishments to which he is exposed. Yes?

**Student:** Your point was made in the next sentence which you didn’t allow him to read on that same page. That contradicts this paragraph.

**LS:** You mean [Book] XI, [chapter] 6, [paragraph] 3?

**Student:** Yes.

**LS:** You mean, “In order to have this liberty, it is requisite the government be such as one citizen need not fear another.”<sup>vi</sup>

**Student:** This makes it dependent on government.

**LS:** That is all right, but, as Montesquieu says, he cannot say everything at the same time. You have to wait, and therefore he gives an incomplete statement about liberty in Book XI and in Book XII he makes it more clear.

**Student:** I know, but he makes dependent in Book XI what he says is independent in Book XII.

**LS:** I see, in other words, you confirm my interpretation.

**Student:** Exactly.

**LS:** I see,<sup>16</sup> and this, doubtless, flatters my vanity. Yes?

**Student:** Some light comes upon it from Nugent’s mistranslation of the second sentence of paragraph 3. Where you said, “it is necessary that the government be such,” he says, “the government be so constituted.”

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<sup>iv</sup>In original: “The constitution may happen to be free, and the subject not. The subject may be free, and not the constitution.”

<sup>v</sup>*Spirit of Laws*, vol. I, bk. XII, ch. 1, 183.

<sup>vi</sup>*Spirit of Laws*, vol. I, bk. XI, ch. 6, 151. Strauss’s own translation.

**LS:** Well, that's all right.

**Student:** Well,<sup>17</sup> think of Austria of 1900, not a free constitution, but not entirely accidental that it was an agreeable place to live for many, since Metternich [and] the government was such. But it wasn't the separation of powers [or] strictly constitutional features which led it to be systematically free.

**LS:** Such is vaguer than what he says here. But since he is preparing here in XI, 6 for a statement about the separation of powers, Nugent is accidentally right. As a translator he should take no liberties, but this time he is right about the governmental powers.

Let us turn now to the next point, in chapter 1 of Book XII.

**Mr. Reinken:** "It is the disposition only of the laws, and even of the fundamental laws, that constitutes liberty in relation to the constitution. But as it regards the citizen: manners, customs, or received examples may give rise to it, and particular civil laws may encourage it, as we shall presently observe."<sup>vii</sup>

**LS:**<sup>18</sup> The fundamental laws, what we would call the constitutional laws, establish political liberty [and] a free constitution. But what we need for the freedom of the citizen is, among other things, certain civil laws. One of you said it depends on manners rather than laws.<sup>19</sup> It depends also on laws<sup>20</sup>—not constitutional laws, [but] civil laws. And what these civil laws are we will see very soon.

Let us move closer to the discussion of the liberty of the citizen in chapter 2 where he takes up the subject he had discussed in Book XI, chapter 3: the various meanings of liberty or freedom.<sup>21</sup> Read the first paragraph of chapter 2.

**Mr. Reinken:** "Philosophic liberty consists in the free exercise of the will; or at least, if we must speak agreeably to all systems, in an opinion that we have the free exercise of our will. Political liberty consists in security, or, at least, in the opinion that we enjoy security."<sup>viii</sup>

**LS:**<sup>22</sup> This philosophic liberty had not been mentioned in XI, 3, and what is the issue here regarding what he calls philosophic liberty? Which means liberty as it becomes a problem for philosophers, not liberty to philosophize, or something like this.<sup>23</sup> That is the issue of whether there is a free will or not, which was a very great issue especially since the 17th century, since Hobbes and Spinoza. I found here a note in this edition: "The [inaudible words] in its criticism of the *Spirit of the Laws*, has reproached Montesquieu for not having condemned philosophic determinism."<sup>ix</sup> In other words, Montesquieu obviously does not condemn it, he simply says, "I am not interested in whether you accept this or that hypothesis. If one must speak in all systems," meaning no system can

<sup>vii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 1, 183.

<sup>viii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 2, 183.

<sup>ix</sup> Edition unknown.

establish its prime truth. This was leading up to what later on began to be called positivism. There is, of necessity, a variety of systems, the conflict between which cannot be solved by reason. And this played a great role in the second half of the 18th century especially, and we have here this usage. Now this is<sup>24</sup> not surprising for us that Montesquieu does not come out forcefully against determinism. We must see later what the true basis of his position is.

Let us turn to the paragraph before the end of this chapter. In the meanwhile he will make clear that it is the penal laws with which he is concerned. Now, the second paragraph before the end.

**Mr. Reinken:** “The knowledge already acquired in some countries, or that may be hereafter attained in others—”

**LS:** No, “that one will acquire in others.”

**Mr. Reinken:** “—will be acquired in others, concerning the surest rules to be observed in criminal judgments, is more interesting to mankind than any other thing in the world.”<sup>x</sup>

**LS:** And this means in plain English that from Montesquieu’s point of view, this is the most important part of his work. This is more important than the separation of powers.<sup>25</sup> What is so interesting about this is<sup>26</sup> [that] he says the knowledges, literally translated, which one has acquired in a certain country and which one *will* acquire in others. He is absolutely certain that one will acquire that in France<sup>27</sup> through the *Spirit of the Laws*, but also in Italy, Germany, and so on. Why is he so certain of that?<sup>28</sup>

**Student:** Because he is writing them.

**LS:**<sup>29</sup> Not quite, because he cannot know all kinds of things. All kinds of things might happen, France might become despotic and prevent distribution of the book.

**Student:** It is of necessity.

**LS:** Exactly. There is a necessity of intellectual progress. Once the truth has been found in a certain field, say in celestial physics through Newton,<sup>30</sup> [then it] is bound to spread<sup>31</sup>. This has, however, another implication not stated here, but we will come across other passages, that this intellectual progress will necessarily lead to social progress. If people know the truth about penal law then the penal laws will be reformed more or less profoundly. Yes?

**Student:**<sup>32</sup> Isn’t part of it here that it is not only a truth, but an agreeable truth, agreeable to the majority of the people.

**LS:** That is hard to say. The people enjoyed very much these cruel and unusual punishments? Well, look at that. Without fully believing that they would be the victims of

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<sup>x</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 2, 184.

them. That was big fun, to look at public executions. But if these people who are now so cruel, who enjoy cruel punishment, will become enlightened, then they will no longer enjoy it and might prefer to look at bullfights or other more exciting spectacles than whether a famous criminal will behave bravely when he is about to be killed, and what kind of speech he will make on that occasion.

But the main point here is the quite striking point: the certainty on the part of Montesquieu that acquired knowledge is bound to spread. Montesquieu has<sup>33</sup> certain qualifications in this respect. He is sure that it will not spread to China and other places. But<sup>34</sup> in the best of places [it will].

Next, read the final paragraph.

**Mr. Reinken:** “Liberty can be founded on the practice of this knowledge only—”

**LS:** Yes, you see how important. Only on the practice of this knowledge, namely regarding the proper penal law, can liberty be founded.

**Mr. Reinken:** “—and supposing a state to have the best laws imaginable—”

**LS:** “Possible.”

**Mr. Reinken:** “—the best laws possible in this respect, a person tried under that state, and condemned to be hanged the next day, would have much more liberty than a pasha enjoys in Turkey.”<sup>xi</sup>

**LS:**<sup>35</sup> The standard is<sup>36</sup> security, liberty in the sense of security. And the best state<sup>37</sup> has the best laws possible regarding penal law, because that has more to do with the concern of the human race than any other. Yes?

**Student:** Could this imply that, say, a man tried for murder under due process and the jury found him guilty when he was really innocent, would really be, according to Montesquieu, freer because he was [inaudible words] a passion which exists in the state of nature?

**LS:** Yes,<sup>38</sup> that makes perfect sense. Look at this. One of the signs of a free man is that he cannot be lawfully insulted<sup>39</sup>—that is one sign.<sup>40</sup> If you have due process in the modern sense of the word, that was already stated by Hobbes before Montesquieu, the judge does not have any right to insult the criminal, even if [he is] convicted. He has to hand down the judgment but he has to respect him as a human being. And therefore as the pasha will<sup>41</sup> be kicked and all sorts of things by his sultan, that makes perfect sense.

I see your hesitation because it is a funny kind of freedom to be politely condemned to death and to be politely executed. Locke makes some jokes about this, [about] a man [who was] much less radical than Locke who had said that if you had to depose a king

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<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 2, 184.



because of his tyranny, or even to kill him for that reason, you have to do it with courtesy. To say, as it were, “please, your majesty.”<sup>42</sup> Locke makes some nasty jokes about it.

**Student:** I was wondering if this last paragraph might be an echo—this business about suffering and justice and doing it—that the pasha, living in the sort of state that he does, is in no condition to do justice, whereas this man about to be hung is about to do a very just thing?

**LS:** Yes,<sup>43</sup> you can link it up with that, that is true.<sup>44</sup>

Now, let us read the next chapter.

**Mr. Reinken:** “Those laws which condemn a man to death—”

**LS:** You see, here you have a strange fact: Chapter two is entitled “Of the liberty of the Citizen,” and chapter three, [which is] very short, “Continuation of the same Subject.” Why couldn’t he have<sup>45</sup> [included it in chapter 2]? He has much longer chapters. So, let us read that.

**Mr. Reinken:** “Those laws which condemn a man to death on the deposition of a single witness are fatal to liberty. In reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must decline the scale.

“The Greeks and Romans required one voice more to condemn: but our French laws insist upon two. The Greeks pretend that their custom was established by the gods; but this more justly may be said of ours.”<sup>xii</sup>

**LS:**<sup>46</sup> You remember the case that was<sup>47</sup> in Book X<sup>48</sup>, chapter three,<sup>49</sup> when he spoke of “our modern times, our philosophy, and the present revision.”<sup>50</sup> Here we have also that the Greeks and the Romans are inferior in this respect. To what? To our French law. But is this great progress in penal law due to Christianity? That would<sup>51</sup> be the most interesting question. Do we get an answer to this question here?

**Student:** He says in chapter two that some of the most modern nations<sup>52</sup> had some of the best laws to protect innocent people; so there seems to be no necessary connection here.

**LS:** No,<sup>53</sup> that is not the point.

**Student:** I was thinking about the fact that Christianity is dangerous—

**LS:** No, it is not so simple.

**Student:** Isn’t it right here in this sentence? The Greeks preferred customs established by the gods, but this more justly may be said of ours. Our laws are established by the gods.

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<sup>xii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 3, 184–85.

**LS:** Exactly. Yes, that is the way in which he says that.

Now, let us see in the next chapter only the first sentence.

**Mr. Reinken:** “Liberty is in perfection when criminal laws derive each punishment from the particular nature of the crime.”<sup>xiii</sup>

**LS:** Yes, “from the particular nature of the crime.”<sup>54</sup> Then he makes the distinction between the four types of crimes. Let us see a few of these points. First, the simple sacrilege. Is there anyone here who knows what simple sacrileges are in the strict sense? What about by a deed showing disrespect of the church or what is in a church? I do not know, I forgot to look it up.

**Student:** I have a note on that. A sacrilege is that such as the profaning of a host.

**LS:** Let us read this paragraph.

**Mr. Reinken:** “In order to derive the punishment of simple sacrileges from the nature of the thing, it should consist in depriving people of the advantages conferred by religion in expelling them out of the temples, in a temporary or perpetual exclusion from the society of the faithful, in shunning their presence, in execrations, comminations, and conjurations.”<sup>xiv</sup>

**LS:**<sup>55</sup> Just as crimes against property would be punished by deprivation of property, crimes against religion will be punished by deprivation of religious benefits, strictly understood. This is the point. But the complication of the problem appears from the next paragraph.

**Mr. Reinken:** “In things that prejudice the tranquillity or security of the state, secret actions are subject to human jurisdiction. But in those which offend the Deity, where there is no public act, there can be no criminal matter, the whole passes between man and God, who knows the measure and time of His vengeance. Now if magistrates confounding things should inquire also into hidden sacrileges, this inquisition would be directed to a kind of action that does not at all require it: the liberty of the subject would be subverted by arming the zeal of timorous as well as of presumptuous consciences against him.”<sup>xv</sup>

**LS:**<sup>56</sup> There is a certain difficulty here because if simple sacrileges<sup>57</sup> cannot have any civil punishment proper, why does this not apply still more so to hidden or secret sacrileges? What does he mean by this word?<sup>58</sup> What is the concrete fact that he has in mind when he speaks of hidden sacrileges?

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 4, 185.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 4, 185.

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 4, 185.

**Student:** Apostasy.

**LS:** Yes, something like that. At any rate, let us say unbelief.<sup>59</sup> This was<sup>60</sup> a punishable offense and therefore he must take this issue up. What is the principle behind it? This he will state in the next paragraph, “From this idea that one must avenge the Deity—”

**Mr. Reinken:** “But we must honor the Deity and leave him to avenge his own cause.”

**LS:** No, “and never avenge that.” He is much cruder.

**Mr. Reinken:** “And, indeed, were we to be directed by such a notion, where would be the end of punishments? If human laws are to avenge the cause of an infinite Being, they will be directed by his infinity, and not by the weakness, ignorance, and caprice of man.”<sup>xvi</sup>

**LS:** “Of human nature.” This was severely attacked by the Sorbonne,<sup>61</sup> the university at Paris. “This proposition is scandalous, impious, erroneous, and heretical.”<sup>62xvii</sup> [This is] one of the reasons why this book was condemned to the congregation of the Index.<sup>63</sup> Montesquieu apparently had the intention to omit this paragraph in later editions but he didn’t do it; for some reason he stuck to this point. Yes, now let us go on.

**Mr. Reinken:** “An historian of Provence relates a fact which furnishes us with an excellent description of the consequences that may arise in weak capacities from the notion of avenging the Deity’s cause. A Jew was accused of having blasphemed against the Virgin Mary; and upon conviction was condemned to be flayed alive. A strange spectacle was then exhibited: gentlemen masked, with knives in their hands, mounted the scaffold, and drove away the executioner, in order to be the avengers themselves of the honor of the blessed Virgin. I do not here choose to anticipate the reflections of the reader.”

**LS:** Yes, good. And the next paragraph.

**Mr. Reinken:** “The second class consists of those crimes which are prejudicial to morals. Such is the violation of public or private continence, that is, of the police directing the manner in which the pleasure annexed to the senses and to the conjunction of the sexes is to be enjoyed. The punishment of those crimes ought to be also derived from the nature of the thing; the privation of such advantages as society has attached to the purity of morals, fines, shame, necessity of concealment, public infamy, expulsion from home and society, and, in fine, all such punishments as belong to a corrective jurisdiction, are sufficient to repress the temerity of the two sexes. In effect these things are less founded on malice than on carelessness and self-neglect.”<sup>xviii</sup>

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 4, 186.

<sup>xvii</sup> See the fourth proposition of the seventeen propositions extracted and censured by the Faculty of Theology of the Sorbonne. Montesquieu responded in his “Réponses et Explications,” solemnly promising that the phrase would be deleted. He lied. See Pléiade ed. vol. 2, p. 1175.

<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 4, 186.

**LS:**<sup>64</sup> What do these somewhat critical remarks say? It is clear that these are not strictly crimes, they are subject to correctional jurisdiction. And that means that they are not strictly speaking criminal. Is not this clear? In other words, there can be only limited prison terms; that is the practical meaning of that. But the question is this: He says here that the punishment for these crimes must again be drawn from the nature of the thing—the privation of the advantages which society has attached to the purity of the manners. That is the only possible punishment. There is an implication in the fact that society has attached advantages to it. Who else could have attached advantages to it?

**Student:** God.

**LS:** God, yes, or?

**Student:** Nature.

**LS:** Nature.<sup>65</sup> This is not a matter of natural right proper. That is the [unstated] implication.<sup>66</sup> You see it also indicated in “these things are founded less on viciousness than by forgetting oneself or despising oneself.”

Now, you remember the distinction which he made in<sup>67</sup> [Book I] between what the philosophers taught us—

**Student:** And what the civil laws taught.

**LS:** Yes,<sup>68</sup> can you remember that section?

**Student:** The moral laws which recall man to himself and the civil and political laws recall his obligations to others.

**LS:**<sup>69</sup> These are things which by themselves would not be subject to civil or political jurisdiction at all, but which have customarily been connected with—and Montesquieu being a moderate man doesn’t wish to abolish this kind of jurisdiction. Yes?

**Student:** That would imply that there is a grounding in nature for these regulations. It’s just that it’s not up to society necessarily to punish them. But there is a reason in nature why people should abstain.

**LS:** Yes,<sup>70</sup> let us see what more we find out about this subject and that of homosexuality. He would probably distinguish between some of these crimes and others.<sup>71</sup>

The most important crimes are<sup>72</sup> the third and fourth classes. But I think we do not have to read it and as a matter of fact we cannot read it because if we read everything we would not get through. Let us turn to chapter five and let us read the first and last sentence of the chapter please.

**Mr. Reinken:** “It is an important maxim, that we ought to be very circumspect in the prosecution of witchcraft and heresy.”

“I have not here asserted that heresy ought not to be punished; I said only that we ought to be extremely circumspect in punishing it.”<sup>xix</sup>

**LS:** What is the difference between the beginning and the end?

**Student:** What he leaves out.

**LS:** And what does this mean? It is absurd to punish witchcraft, yes. But you see how cautious he is, he doesn’t say it explicitly. Only by being silent about it in the concluding remark does he make it absolutely clear that the punishment of witchcraft has no foundation whatever.

And even regarding heresy he is very clear, for he also says, “I have not said *here* that one should not punish—” Now let us read the third paragraph of this chapter.

**Mr. Reinken:** “But their indignation increases when witchcraft is supposed to have the power of subverting religion. The history of Constantinople informs us that in consequence of a revelation made to a bishop of a miracle having ceased because of the magic practices of a certain person, both that person and his son were put to death. On how many prodigious things did not this single crime depend?<sup>xx</sup> That revelations should not be uncommon, that the bishop should be favored with one, that it was real, that there had been a—”

**LS:** A “true” revelation and not a satanic whistle.

**Mr. Reinken:** “—that there was a miracle in the case, that this miracle had ceased, that there was an art magic, that magic could subvert religion, that this particular person was a magician, and, in fine, that he had committed that magic act.”<sup>xxi</sup>

**LS:** Now, this commentator says, “*il se moque*,” how do you say that?

**Student:** Mocks, makes fun of it.

**LS:** Yes. “And nevertheless this passage has not been censored. It is true that prudently he takes his examples only from the history of Byzantium.”

Now, let us then turn to the next chapter. We come to the subject not yet discussed, namely, the crimes against nature. This is also very amusing, I am sorry to say, but it is the way which Montesquieu handles it. Now, in order to see it, I will tell you a story, and I hope no one will be offended by it. You know that sexual crimes were punished in

<sup>xix</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 5, 187.

<sup>xx</sup> In original: “On how many surprising things did not this single crime depend?”

<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 5, 188.

former ages capitally on the basis of the Old Testament law. And in the 18th century things were changing and people did no longer feel it.<sup>73</sup> There is the famous story of the<sup>74</sup> Prussian king Frederick the Great, that he once, in his capacity as chief commander,<sup>75</sup> got the condemnation of a cavalryist because he had misused his ward.<sup>76</sup> He was condemned to death. And Frederick, this enlightened monarch, made only this note on the statement of the judge: “The pig is to be transferred to the infantry.” And something of this spirit is presently in Montesquieu. I believe that this is the only chapter that begins in this emphatic way.

**Mr. Reinken:** “God forbid that I should have the least inclination to diminish the public horror against a crime which religion, morality, and civil government equally condemn. It ought to be proscribed, were it only for its communicating to one sex the weaknesses of the other, and for leading people by a scandalous prostitution of their youth to an ignominious old age. What I shall say concerning it will in no way diminish its infamy, being levelled only against the tyranny that may abuse the very horror we ought to have against the vice.”

**LS:** Skip the next paragraph.

**Mr. Reinken:** “It is very odd that these three crimes, witchcraft, heresy, and that against nature, of which the first might easily be proved not to exist; the second to be susceptible of an infinite number of distinctions, interpretations, and limitations; the third to be often obscure and uncertain—it is very odd, I say, that these three crimes should amongst us be punished with fire.”

**LS:** Yes,<sup>77</sup> “amongst us”—we have that again. Heresy is in the center because I would say it is truly the most important and most interesting case.<sup>78</sup>

Although Mr. Schaefer has understood this chapter perfectly, we should nevertheless read the last paragraph.

**Mr. Reinken:** “I may venture to affirm that the crime against nature will never make any great progress in society unless people are prompted to it by some particular custom, as among the Greeks, where the youths of that country performed all their exercises naked; as amongst us, where domestic education is disused—”

**LS:** What does that mean?

**Student:** Public schools.

**LS:** Yes.

**Mr. Reinken:** “—as amongst the Asiatics, where particular persons have a great number of women whom they despise, while other can have none at all.”

**LS:** Incidentally, this is a simple example to show the fact that in writings of this kind what is in the center in an enumeration is most important.<sup>79</sup> He gives the Greek example, the French example, and the Asiatic example, and the French is obviously the most important. I mention this only in passing, let us go on.

**Mr. Reinken:** “Let there be no customs preparatory to this crime; let it, like every other violation of morals, be severely proscribed by the civil magistrate; and nature will soon defend or resume her rights. Fond, lovable, charming she has strewed her pleasure with a bounteous hand, and while she fills us with delights she prepares us, by means of our issue, who make us, so to speak, born again for future satisfactions greater than those very delights.”<sup>xxii</sup>

**LS:**<sup>80</sup> There is a natural impropriety of homosexuality because it is the use of sex without any possibility of procreation. That is clear. And that is of course the traditional view and I would assume that this is also Montesquieu’s serious view.<sup>81</sup>

This is a crime against natural right. But you see also the point which he makes here about nature, how it is “sweet, amiable, charming” and “the giver of pleasures.” So who could possibly wish to be so harsh and cruel to offend this kind mother.<sup>82</sup> Whether this is the last word of Montesquieu on nature remains to be seen, but surely he uses this language.

Now let us turn to chapter eight. Chapters eight, nine, and ten have the same subject: “Of the bad Application of the name of the Crime of Sacrilege and High Treason.”<sup>83</sup> Note one thing: In this chapter, the central chapter again, only pagan emperors are mentioned. And these were all sensible men who did not enlarge the meaning of high treason.

Now we come to a very important, very short chapter, chapter eleven.

**Mr. Reinken:** “‘Of Thoughts.’

“Marsyas dreamed that he had cut Dionysius’s throat.”

**LS:** Dionysius being a tyrant.

**Mr. Reinken:** “Dionysius put him to death, pretending that he would never have dreamed of such a thing by night if he had not thought of it by day. This was a most tyrannical action: for though it had been the subject of his thoughts, yet he had made no

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<sup>xxii</sup> In original: “Let there be no customs preparatory to this crime; let it, like every other violation of morals, be severely proscribed by the civil magistrate; and nature will soon defend or resume her rights. Nature, that fond, that indulgent parent, has strewed her pleasure with a bounteous hand, and while she fills us with delights she prepares us, by means of our issue, in whom we see ourselves, as it were, reproduced—she prepares us, I say, for future satisfactions of a more exquisite kind than those very delights.” *Spirit of Laws*, vol. I, bk. XII, ch. 6, 189–90.

attempt towards it. The laws do not take upon them to punish any other than overt acts.<sup>xxiii</sup>

**LS:** Yes, that is an old story, the distinction between such as he has called “external acts” and “internal acts.” In the middle ages it was sometimes called transient and immanent acts, immanent being those that remained with him. But the key question which he does not explicitly take up is indicated by the title. Thoughts are clearly immanent acts. But what about words [and] speeches? Are they also immanent?<sup>84</sup> I’ll state it from a different point of view. If a man thinks something—including what he dreams—this can never be proven against him if he denies it. If someone would be accused of having dreamed I don’t know what, there could not be any witnesses. But if he has said something, there is in principle the possibility of others testifying against him.<sup>85</sup> The key question is speeches, not thoughts as such because thoughts can become<sup>86</sup> [known] only by means of speeches. And therefore he turns in the next chapter to words or speeches.<sup>87</sup> His point is that words should not be punished. Punishable acts can only be actions and not words. This leads to the further problem of writings which are also a form of speeches, which he takes up in chapter thirteen.

Now let us turn to chapter fourteen.

**Mr. Reinken:** “‘Breach of Modesty in punishing Crimes.’

“There are rules of modesty observed by almost every nation in the world; now it would be very absurd to infringe these rules in the punishment of crimes, the principal view of which ought always to be the establishment of order.”<sup>xxiv</sup>

**LS:**<sup>88</sup> There are rules of modesty observed by almost all nations of the world, which means<sup>89</sup> that there are quite a few rules of modesty which are observed by only a few nations. And there is not a single one which is universally observed. That has something to do with the question of natural right. He surely does not say that violations of modesty are against natural right.

Let us read the last paragraph of this chapter. These points will be taken up later on when he takes up the problem of marriage [and] incest laws coherently.

**Mr. Reinken:** “When the magistrates of Japan caused women to be exposed naked in the market-places, and obliged them to go upon all fours like beasts, it shocked modesty: but when they wanted to compel a mother—when they wanted to force a son—I cannot proceed; it shocked nature herself.”<sup>xxv</sup>

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<sup>xxiii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 11, 193.

<sup>xxiv</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 14, 195.

<sup>xxv</sup> In original: “When the magistrates of Japan caused women to be exposed naked in the market-places, and obliged them to go upon all fours like beasts, modesty was shocked: but when they wanted to compel a mother—when they wanted to force a son—I cannot proceed; even Nature herself is struck with horror.” *Spirit of Laws*, vol. I, bk. XII, ch. 14, 196.



**LS:** You see the distinction which he makes here between the first thing and incest between mother and son. Incest, he is willing to grant, is against nature. These are always questions of freedom of speech.

Chapter seventeen.

**Mr. Reinken:** “‘Of the revealing of Conspiracies.’

“‘If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own, should entice thee secretly, saying, “Let us go and serve other gods,” thou shalt surely kill him, thou shalt stone him.’ Thy hand first shall be upon him, then that of all the people. This law of Deuteronomy cannot be a civil law among most of the peoples which we know, because it would .open the door to all the crimes.”<sup>xxvi</sup>

**LS:**<sup>90</sup> I think that he has never stated his criticism of the Old Testament as clearly as here. Now let us read the third paragraph after this.

**Mr. Reinken:** “In Japan, where the laws subvert every idea of human reason, the crime of concealment is applied even to the most ordinary cases.”<sup>xxvii</sup>

**LS:**<sup>91</sup> That is a point which he did not state in the first paragraph. What he means, of course, is the law is against human reason.<sup>92</sup>

Now let us turn to the next chapter, second paragraph.

**Mr. Reinken:** “Great punishments, and consequently great changes, cannot take place without investing some citizens with an exorbitant power. It is, therefore, more advisable in this case to exceed in lenity than in severity; to banish but few, rather than many; and to leave them their estates, instead of making a vast number of confiscations. Under pretence of avenging the republic’s cause, the avengers would establish tyranny. The business is not to destroy the rebel, but the rebellion. They ought to return as quickly as possible into the usual track of government, in which every one is protected by the laws, and no one injured.”<sup>xxviii</sup>

**LS:** The last sentence contains a very crucial qualification of this passage. One must return as soon as possible, i.e. there may very well be conditions which are exceptional tribunals and military tribunals. He allows for that. This is a point which you did not mention [referring to the student who presented an interpretation at the beginning of the

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<sup>xxvi</sup> In original: “‘If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, “Let us go and serve other gods,” thou shalt surely kill him, thou shalt stone him.’ This law of Deuteronomy cannot be a civil law among most of the nations known to us, because it would pave the way for all manner of wickedness.”

<sup>xxvii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 17, 197.

<sup>xxviii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 18, 197–98.

class]. He admits the possibility of exceptional tribunal. And we find a much stronger place later on. Now in the next chapter read the title.

**Mr. Reinken:** “In what Manner the Use of Liberty is suspended in a Republic.”

**LS:** Yes, and what does he speak about that. Read the chapter.

**Mr. Reinken:** “In countries where liberty is most esteemed, there are laws by which a single person is deprived of it, in order to preserve it for the whole community. Such are in England what they call Bills of Attainder.”

**LS:**<sup>93</sup> England as a republic is now completely taken for granted. The title speaks of republics.

**Mr. Reinken:** “These are in relation to those Athenian laws by which a private person was condemned, provided they were made by the unanimous suffrage of six thousand citizens. They are in relation also to those laws which were made at Rome against private citizens, and were called privileges.”

**LS:** In other words with the name of the individual—

**Mr. Reinken:**<sup>94</sup> “These were never passed except in the great meetings of the people. But in what manner soever they were enacted, Cicero was for having them abolished, because the force of a law consists in its being made for the whole community.”<sup>xxix</sup>

**LS:**<sup>95</sup> This is a key point. Notice that law must be general. He mentions here Cicero but the most ruthless conclusions drawn from that were by Rousseau. Montesquieu accepts this in principle but not without qualifications as we will see soon.

In chapter twenty-three<sup>96</sup> he speaks of spies in monarchies. Here he speaks of how many reasons the prince [or]<sup>97</sup> monarch has to be kind to his subjects.

**Mr. Reinken:** “And how should they do otherwise than love him, since he is the source of almost all bounties and favors; punishments being generally charged to the account of the laws?”<sup>xxx</sup>

**LS:**<sup>98</sup> You see, in the sentimental language of Montesquieu, a tough maxim is hidden, stated very forcefully by Machiavelli and before by some ancient writers, that the king, the tyrant, must do the nice things himself and the tough things he has to do by other means—his ministers. And then he will be universally loved because they will say, as some people in Germany said of Hitler, “the Fuhrer doesn’t know of these wicked S.S. men.”

**Student:** He does allow the monarch to judge and then pardon.

<sup>xxix</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 19, 199.

<sup>xxx</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 23, 202.

**LS:** Yes, he must appear only as grace itself and not as an enemy. He says the same thing at the end of chapter twenty-five.

**Mr. Reinken:** “The whole felicity of monarchies consists—”

**LS:** “Of *our* monarchies.”

**Mr. Reinken:** “—of our monarchies consists in the opinion which the subjects entertain of the lenity of the government.”<sup>xxxix</sup>

**LS:** Now what kind of felicity can this be?

**Student:** Possibly illusory.

**LS:** Yes,<sup>99</sup> in other words they have no other felicity but that of pity.

**Mr. Reinken:** “A weak minister is ever ready to remind us of our slavery. But granting, even, that we are slaves, he should endeavor to conceal our misery from us. All he can say or write is that the prince is uneasy, that he is surprised, and that he will redress all grievances. There is a certain ease in commanding; the prince ought only to encourage, and let the laws menace.”<sup>xxxix</sup>

**LS:** That is the point and a different application of the same principle.<sup>100</sup>

Chapter twenty-seven is the beginning of the manners of the monarch. The morals of the monarch contribute as much as the laws to liberty.<sup>101</sup> We see that he says very little on laws in the section on monarchy whereas he speaks quite a bit about laws when he speaks of republican government.<sup>102</sup> Look at the chapter heading of chapter twenty-nine.

**Mr. Reinken:** “Of the civil Laws proper for mixing some portion of Liberty in a despotic Government.”

**LS:** Yes, but he doesn’t use the same term laws when speaking of monarchy.<sup>103</sup> Granted<sup>104</sup> there is a bit more liberty in monarchy than despotism, he doesn’t wish to emphasize this point. And this is only [a] confirmation of the general point I made at the beginning that you can have liberty of the constitution without having liberty of the citizens; but you cannot have liberty of the citizens without liberty of the constitution.<sup>105</sup>

Let us read chapter twenty-nine.

**Mr. Reinken:** “Though despotic governments are of their own nature everywhere the same, yet from circumstances—from a religious opinion, from prejudice, from received

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<sup>xxxix</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 25, 203.

<sup>xxxix</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 25, 203.

examples, from a particular turn of mind, from manners or morals—it is possible they may admit of a considerable difference.

“It is useful that some particular notions should be established in those governments. Thus in China the prince is considered as the father of his people; and at the commencement of the empire of the Arabs, the prince was their preacher.

“It is proper there should be some sacred book to serve for a rule, as the Koran among the Arabs, the books of Zoroaster among the Persians, the Veda among the Indians, and the classic books among the Chinese. The religious code supplies the civil and fixes the extent of arbitrary sway.”<sup>xxxiii</sup>

LS:<sup>106</sup> Here I find this note by the editor: “The title of this chapter announces *civil* laws, and yet, in the chapter he speaks only of morals, manners, and at most, of religious codes.”<sup>xxxiv</sup> Is this criticism fair?

**Student:** [inaudible words]

LS: Yes, how does this come out? What does this imply?

**Student:** It would imply that the divine source subscribed to the civil laws.

LS: No, that is not clear now.

**Student:**<sup>107</sup> For instance, among the Arabs the laws are those of the Koran.

LS: Yes, divine origin.

**Student:** That religious law does not usually legislate on what sort of government or the constitution.

LS: No, more strict. Again I see how useful it is if one has a reasonable degree of familiarity with old Hobbes. Hobbes is surely a very important man. Anyone who has read Hobbes would know the answer to this question. How come the Bible, to take the most important example, has legal validity in England?

**Student:** [inaudible words]

LS: The sovereign!<sup>108</sup> In other words if all religious laws, beliefs, have legal power only by virtue of the piety of the human sovereign, then of course legal codes are civil laws. It is as simple as that. And that is the implication.

**Student:** Didn’t you mean to say that “then religious codes are civil laws?”

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<sup>xxxiii</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 29, 205.

<sup>xxxiv</sup> Edition unknown.

**LS:** Yes. All laws are civil laws, even the customs, the age-long customs which have never become a part of statute law<sup>109</sup> have legal validity only by virtue of the tacit approval of the sovereign.

There is a point which I overlooked where there is a note by the editor agreeing with Mr. Schaefer in chapter twenty-seven. Now read this whole chapter.

**Mr. Reinken:** “The manners of a prince contribute as much as the laws themselves to liberty; like these he may transform men into brutes, and brutes into men. If he prefers free and generous spirits, he will have subjects; if he likes base, dastardly souls, he will have slaves.”

**LS:** “Dastardly” is added by Neumann.

**Mr. Reinken:** “Would he know the great art of ruling, let him call honor and virtue to attend his person; and let him encourage personal merit. He may even sometimes cast an eye on talents and abilities.”

**LS:** That is, of course, supreme nastiness.

**Mr. Reinken:** “Let him not be afraid of those rivals who are called men of merit; he is their equal when once he loves them. Let him gain the hearts of his people, without subduing their spirits. Let him render himself popular; he ought to be pleased with the affections of the lowest of his subjects, for they too are men. The common people require so very little condescension, that it is fit they should be humored; the infinite distance between the sovereign and them will surely prevent them from giving him any uneasiness.”<sup>xxxv</sup>

**LS:** To which our editor adds the remarks, “Being a monarchist, an aristocrat, Montesquieu despises the people.” And this is sheer irony of course. That is the only point where you were wrong Mr. Schaefer.

**Mr. Schaefer:** [inaudible words]

**LS:** Did you not say that he has a contempt for the common people?

**Mr. Schaefer:** Yes.

**LS:** Well, you meant this passage here?<sup>110</sup>

**Mr. Schaefer:** It’s not predicated on the people and their distance from the sovereign but it is a bit contemptuous that they can be so easily—

**LS:**<sup>111</sup> No, that is really only a satire on kingship and not a satire on the people.

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<sup>xxxv</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 27, 204.

Now let me see. Yes?

**Student:** There was a strange tone to his remarking earlier that, about those whom one has abandoned in all ages. Something of a reproach.

**LS:** Yes,<sup>112</sup> more than a simple agreement. I think he was surely not sentimental but something a bit more considerate was in it.

We didn't discuss one very important passage regarding exceptional laws.<sup>113</sup> Read [the end of] chapter nineteen.<sup>114</sup>

**Mr. Reinken:**<sup>115</sup> "Because the force of a law consists in its being made for the whole community. I must own, notwithstanding, that the practice of the freest nation that ever existed induces me to think that there are cases in which a veil should be drawn for a while over liberty, as it was customary to cover the statues of the gods."<sup>xxxvi</sup>

**LS:** Yes, that is famous for exceptional law and which links Montesquieu more with Machiavelli than with the later Locke, which will not permit a veil to be drawn over liberty, or the statue of liberty [inaudible words] as they sometimes concealed the statues of the gods.

**Student:** Does he mean the case of the private citizen [inaudible words]

**LS:**<sup>116</sup> There cannot be any laws against the individual, that is the point. High treason will never be—a general law. But there may be situations in which bills of attainder or something of this kind may be necessary.<sup>117</sup> I give you a contemporary example, not from this country. How good would it be, I say as a reader of newspapers in my private home, if Sukarno<sup>xxxvii</sup> would die right now?<sup>118</sup> Now translate this into political action, of which I am totally incapable. If there were a law Sukarno made in Indonesia directed against him with the intention no one else will ever be exiled or whatever might be the proper punishment. But here it is necessary for the well-being of Indonesia and for making her sufficiently strong against dangerous neighbors. That is the case that would be covered by Montesquieu's statement but which would not be possible in a different state. That is what he means.<sup>119</sup>

Here there is no clear case of high treason. Ordinary laws don't cover such cases. But this particular individual with his charisma—I believe people call it—is by virtue of this particular charisma in this state of things [and] in these circumstances, a menace. At least the generals now in control would say that. And I think from the American point of view one would also be inclined to say that.<sup>120</sup> Therefore this would be a case covered by that. That is what he means. And the formulation is very beautiful you must admit, whatever one may think about the principle.

<sup>xxxvi</sup> *Spirit of Laws*, vol. I, bk. XII, ch. 19, 199.

<sup>xxxvii</sup> Sukarno, born Kusno Sosrodihardjo (1901–1970), was the first president of Indonesia (1945–1967). He was forced from power and replaced by one of his generals. He stayed under house arrest until his death

I think there was only one more passage in the last chapter, first paragraph.

**Mr. Reinken:** “Nothing but the very excess and rage of despotic power ordained that the father’s disgrace should drag after it that of his wife and children. They are wretched enough already without being criminals: besides, the prince ought to leave suppliants or mediators between himself and the accused, to assuage his wrath or to inform his justice.”<sup>xxxviii</sup>

**LS:**<sup>121</sup> What do you say to this paragraph? Does something occur to you [about] this despotic principle?

**Student:** Yes, that punishment goes until the fourth generation. The reason is to punish the patriarch, those of his living great grandchildren—

**LS:** Yes,<sup>122</sup> but the living great grandchildren might be perfectly innocent of that crime. That is exactly what Montesquieu regards as a despotic principle.

Now, in brief, when he speaks against despotism he means<sup>123</sup> more than political despotism strictly understood. We have seen this before.<sup>124</sup>

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<sup>1</sup> Deleted “and.”

<sup>2</sup> Deleted “Well.”

<sup>3</sup> Deleted “and, there.”

<sup>4</sup> Deleted “I doubt that.”

<sup>5</sup> Deleted “very generally.”

<sup>6</sup> Deleted “no, no.”

<sup>7</sup> Deleted “that.”

<sup>8</sup> Deleted “Well.”

<sup>9</sup> Deleted “Well.”

<sup>10</sup> Deleted “of course.”

<sup>11</sup> Deleted “Yes, now.”

<sup>12</sup> Deleted “And I believe that.”

<sup>13</sup> Deleted “is.”

<sup>14</sup> Deleted “I believe.”

<sup>15</sup> Deleted “Now.”

<sup>16</sup> Deleted “I see.”

<sup>17</sup> Deleted “I think.”

<sup>18</sup> Deleted “Yes, in other words.”

<sup>19</sup> Deleted “Well.”

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<sup>xxxviii</sup> *Spirit of Laws*, vol. I, 206.

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- <sup>20</sup> Deleted "of course."
- <sup>21</sup> Deleted "Now why don't we."
- <sup>22</sup> Deleted "Yes, now."
- <sup>23</sup> Deleted "Well."
- <sup>24</sup> Deleted "of course."
- <sup>25</sup> Deleted "Now."
- <sup>26</sup> Deleted "this."
- <sup>27</sup> Deleted "well."
- <sup>28</sup> Deleted "Why is he so certain?"
- <sup>29</sup> Deleted "Yes."
- <sup>30</sup> Deleted "this."
- <sup>31</sup> Deleted "bound to spread. And."
- <sup>32</sup> Deleted "Well."
- <sup>33</sup> Deleted "of course."
- <sup>34</sup> Deleted "still."
- <sup>35</sup> Deleted "Yes, now."
- <sup>36</sup> Deleted "of course."
- <sup>37</sup> Deleted "we can say."
- <sup>38</sup> Deleted "sure."
- <sup>39</sup> Deleted "yes."
- <sup>40</sup> Deleted "Now."
- <sup>41</sup> Deleted "of course."
- <sup>42</sup> Deleted "And."
- <sup>43</sup> Deleted "alright."
- <sup>44</sup> Deleted "That is true."
- <sup>45</sup> Deleted "written it."
- <sup>46</sup> Deleted "Yes."
- <sup>47</sup> Deleted "in, where was that."
- <sup>48</sup> Deleted "or XI, Book X."
- <sup>49</sup> Deleted "We cannot reread it now. We discussed it at the time."
- <sup>50</sup> Deleted "You remember that? Good. And."
- <sup>51</sup> Deleted "of course."
- <sup>52</sup> Deleted "that."
- <sup>53</sup> Deleted "no."
- <sup>54</sup> Deleted "Yes, and."
- <sup>55</sup> Deleted "In other words."



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- <sup>56</sup> Deleted "In a way."
- <sup>57</sup> Deleted "at least."
- <sup>58</sup> Deleted "I mean."
- <sup>59</sup> Deleted "And."
- <sup>60</sup> Deleted "of course."
- <sup>61</sup> Deleted "you know."
- <sup>62</sup> Deleted "And."
- <sup>63</sup> Deleted "Yes."
- <sup>64</sup> Deleted "Yes, now."
- <sup>65</sup> Deleted "In other words."
- <sup>66</sup> Deleted "of course, not stated. Yes. And."
- <sup>67</sup> Deleted "the first book."
- <sup>68</sup> Deleted "yes."
- <sup>69</sup> Deleted "In other words."
- <sup>70</sup> Deleted "well."
- <sup>71</sup> Deleted "Now."
- <sup>72</sup> Deleted "of course."
- <sup>73</sup> Deleted "And."
- <sup>74</sup> Deleted "famous."
- <sup>75</sup> Deleted "he."
- <sup>76</sup> Deleted "And, of course."
- <sup>77</sup> Deleted "again."
- <sup>78</sup> Deleted "Now."
- <sup>79</sup> Deleted "You see."
- <sup>80</sup> Deleted "In other words."
- <sup>81</sup> Deleted "So."
- <sup>82</sup> Deleted "Now."
- <sup>83</sup> Deleted "We will only read...."
- <sup>84</sup> Deleted "Well."
- <sup>85</sup> Deleted "Now, of course."
- <sup>86</sup> Deleted "justiciable."
- <sup>87</sup> Deleted "And."
- <sup>88</sup> Deleted "You see."
- <sup>89</sup> Deleted "of course."
- <sup>90</sup> Deleted "Now."
- <sup>91</sup> Deleted "Yes."

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<sup>92</sup> Deleted “Yes? Student: Was it in Japan or was it in China that they failed to discover the crime of murdering the Emperor’s son because the laws were so horrible?”

LS: It was Japan.

Student: Yes, yes, was it Japan?

LS: Yes. Good.”

<sup>93</sup> Deleted “You see, that.”

<sup>94</sup> Deleted “Yes.”

<sup>95</sup> Deleted “Yes, now.”

<sup>96</sup> Deleted “where.”

<sup>97</sup> Deleted “the.”

<sup>98</sup> Deleted “Yes, that is the point.”

<sup>99</sup> Deleted “sure.”

<sup>100</sup> Deleted “Now.”

<sup>101</sup> Deleted “Now.”

<sup>102</sup> Deleted “And.”

<sup>103</sup> Deleted “In other words.”

<sup>104</sup> Deleted “that.”

<sup>105</sup> Deleted “Now let me see. There was something else. Yes, let us see that in chapter twenty-nine.”

<sup>106</sup> Deleted “Now.”

<sup>107</sup> Deleted “Well.”

<sup>108</sup> Deleted “So.”

<sup>109</sup> Deleted “and they.”

<sup>110</sup> Deleted “Student: Yes.

LS: Yes?”

<sup>111</sup> Deleted “Oh.”

<sup>112</sup> Deleted “Yes.”

<sup>113</sup> Deleted “How come that I did not make a note of that? Oh, yes, chapter nineteen.”

<sup>114</sup> Deleted “Student: We had ...

LS: But we hadn’t finished that, we stopped too early.”

<sup>115</sup> Deleted “Yes.”

<sup>116</sup> Deleted “That.”

<sup>117</sup> Deleted “Well.”

<sup>118</sup> Deleted “Sukarno, you know who that is? Good.”

<sup>119</sup> Deleted “You know.”

<sup>120</sup> Deleted “And.”

<sup>121</sup> Deleted “Well.”

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<sup>122</sup> Deleted “sure.”

<sup>123</sup> Deleted “of course.”

<sup>124</sup> Deleted “I see you next time. Good.”

**Session 12: February 10, 1966**

**Leo Strauss:** That was a good paper. I would like to take up a few points. “The fancy projects,” what are they? What do you mean? I believe that you think they are the kinds of things right-wing Republicans would call fancy projects.

**Student:**<sup>1</sup> He wasn’t clear but I assume he would talk about<sup>2</sup>—later on he talks about excessive military expenditures.

**LS:** Yes, and also enormous buildings<sup>3</sup>—Versailles and this kind of thing. Much more than what you thought of.<sup>4</sup>

Now, there is another [point]: you said regarding taxes that in republics one must keep in mind that luxuries should be avoided.

**Same Student:** Yes, except he previously referred to the possibility of a commercial democracy.

**LS:** No, let us first—and luxury must be avoided because democracies, at least, are based on virtue. Does he say so in Book XIII?

**Same Student:** He said this previously and then he indicates it in the section on the Athenian form of taxation,<sup>5</sup> where he speaks of the reason for the high taxes.

**LS:** But does he explicitly speak of virtue?

**Same Student:** No, he doesn’t and this was one curious thing, but this would seemingly be the only reason—

**LS:** Yes, that is the question. And this is connected with another point which you made. You spoke of the right to property and you said that this could not possibly have been meant in any Lockean sense. And the proof you gave is what he says earlier about Plato’s *Republic*, which he seemed to accept as the most perfect democracy.

**Same Student:**<sup>6</sup> That was just one.

**LS:** There is a methodic mistake that you made and therefore of great interest to all of us. Did any of you diagnose it?

**Student:**<sup>7</sup> The question would seem to be whether the earlier or the later statement should rule. There seems to be, since the first group of books, the first eight books, almost completely ignored—

**LS:** That is bad what you said!

**Student:** But the question remains whether the earlier or the later statements should rule or be taken more seriously.

**LS:** Yes, but more generally and more cautiously stated. You do not allow for the possibility that a shift of perspective takes place within the book. And therefore that is a question. Whether you can read, say, Book XIII in the light of Books III or IV? That is the question.

**Student:** I got the feeling from his paper that he was pointing to that same shift.

**LS:** That may very well be, but he didn't apply it in discussing these points. So I think that we can very well say [that] we do not have to deny that there is a right to property according to Montesquieu. The only question is whether it would be a natural right strictly speaking. But what would the basis of it? What was the basis in Locke?

**Student:** In Locke it was the mixing of man's labor with the land, and this was limited to that which he could use for himself and that which he could keep without spoiling—

**LS:** Yes, but this is an unfortunate thing as you know that is no longer a value of civil society.<sup>8</sup>

You cannot mix your leg with the land if the piece of land doesn't belong to you in the first place. So what is the reasoning of Locke as to the rather strong right to property?<sup>9</sup> The starting point is self-preservation. And the right to self-preservation has a natural tendency to develop if it can into the right of comfortable self-preservation.<sup>10</sup> Comfortable self-preservation is not possible without privacy, as you would know if you read descriptions of slum life if you have no experience of this kind of your own; and even more, to have property.<sup>11</sup> You are not dependent on your employers and in the worse case you can simply say, "I abandon all these dependencies and lead a free man's life by living on my property." So this is all right.

Now the last point you made when you took up the issue of climate. Education can correct climate.

**Student:**<sup>12</sup> Montesquieu compares them to children that don't mature as fast. They need more education; they need much wiser legislators.

**LS:** Yes, I don't quarrel with what you said. But the difficulty is this: you seem to say<sup>13</sup> [the belief] that education can correct climate is in contradiction with Montesquieu's determinism. Is this so?

**Same Student:** That's why I said he attempts to skirt the determinism because—

**LS:** But is that a contradiction?

**Same Student:** It's consistent with his enlightenment.

**LS:**<sup>14</sup> Yes,<sup>15</sup> but still, then the question would be simply this: is enlightenment incompatible with determinism?

**Same Student:** It appears so.

**LS:** It appears so, all right.<sup>16</sup> Who was the most famous determinist<sup>17</sup> of the 17th and 18th centuries?

**Same Student:** Spinoza?

**LS:** Spinoza, yes, but one doesn't naturally think of enlightenment when one thinks of Spinoza. Hobbes. And he was very famous for his determinism and he was a very emphatic man of [the] enlightenment. And he didn't see any difficulty here. And I think quite rightly. Why?

**Student:**<sup>18</sup> The idea of enlightenment is that there is intellectual progress and it is necessary—

**LS:** So, in other words, the education is itself one determining factor and the education itself is the necessary effect of certain observations<sup>19</sup>. And the discovery of these methods inside and so forth is itself necessary. So that is a very small difficulty whatever the other difficulties are to which determinism is exposed.<sup>20</sup> Thank you very much.

Now, I would like to say a few words about the other two papers from last time. On page five of your paper Mr. K. you say, "From the severity of the punishments he advocates we see that the ranking of the crimes is based on the degree to which the security of the individual is endangered. The least threatening to the citizen being crimes against tradition." I think you are right and we should have brought this out last time:<sup>21</sup> the principle of security,<sup>22</sup> self-preservation is really the principle, and it helps even to explain this point.

"In setting up the arrangement of the constitution Montesquieu proceeds without regard for the moral nature of the civil servant by interlocking the public offices in a mechanical fashion—power arresting power—the human vices are neutralized. However on the level of the private citizen there is no recourse to such device. Individuals cannot be enmeshed against one another. Montesquieu is driven back to ethics. The task of suggesting just laws and punishments appropriate to the crime is a task of moral philosophy."<sup>23</sup> Here you make a distinction between the mechanic, the man who sets up the machinery of government, and the moral philosopher. Is this distinction valid from Montesquieu's point of view?<sup>24</sup> Let me state it more clearly and precisely.

You have two things. You have this mechanism guaranteeing liberty of the constitution and you have something else, whatever that may be, which makes the citizen free. But

what is the end which you have in mind in both matters, in setting up the free constitution and in guaranteeing the freedom of the citizen? What is the end in both cases?<sup>25</sup>

**Student:** Security.

**LS:** Security. So<sup>26</sup> the distinction which you make presupposes that there are two different ends.

**Same Student:**<sup>27</sup> I was characterizing the two halves of his endeavor or the two halves of political liberty: one could be done in this mechanical fashion but the other needed—

**LS:** Yes, but that is the great question. We have not yet delved with sufficient force into Montesquieu's doctrine of the passions and whether there is not also a kind of mechanism which he employs there, although it would not be the visible mechanism of a political order.<sup>28</sup>

As for the paper of Mr. H., on page one you misunderstand what he understood by philosophical liberty. Philosophical liberty refers simply to the question, the philosophic question, of whether the human will is free or not. And he leaves that question entirely open.

You raise another point which is similar to the point raised by Mr. K. Punishment must derive from the nature of the crime. And in saying this he seems to depart from much of his preceding discussions. Previous analysis established the tendency toward sociological relativism for which Montesquieu is often recognized, namely you have different principles of education in monarchies, despotisms, and democracies. Yet Montesquieu tends to reject or at least to ignore such rationalism as we found in Thomas Aquinas for a non-rationalistic discussion of law and government in terms of the principles of virtue, honor, and fear. In other words, there is relativism and there is rationalism in Montesquieu and there is no clarity as to how the two are related.

The discussion of individual political liberties seems to locate the anchor around which Montesquieu's analysis floats—reason, i.e. not relativism. To accent that, Montesquieu emphasizes the desirability of political liberty, [and] the tone of the essay changes, for he has departed from the area of fact, if one can so term his principles as being psychological fact, to the area of values, i.e. that political liberty is ultimately desirable.<sup>29</sup> You see the connection. Rationalism means values and relativism means no knowledge of values. Montesquieu returns to sociological relativism in chapters eighteen through thirty.<sup>30</sup> Let us discuss this matter because that is a pretty common view of Montesquieu, unavoidable today perhaps, if one doesn't make a certain effort.<sup>31</sup>

Is the issue clear to the class? Today that is very common: Scientific analysis cannot possibly encompass any value judgments. And then there is this fear, but the questions of value, they cannot be settled rationally.<sup>32</sup> Montesquieu is<sup>33</sup> on the way towards present-day enlightenment by being to some extent a sociological relativist. But<sup>34</sup> he is kept back

by some “Thomistic” or other things, mainly rationalist.<sup>35</sup> How are we going to describe that in more precise terms?

**Student:** Well it seems that when Montesquieu—he is always guided by the principle that liberty is the thing to be promoted while he grants that in different regimes the circumstances may require a more despotic regime. His aim apparently is to promote something—

**LS:**<sup>36</sup> Without going into deeper strata<sup>37</sup>, leave it at the average level of the first eight books<sup>38</sup>: You cannot have the same arrangements in a monarchy, and still less in a despotism, which you can have under a democracy. This makes in no way questionable the superiority of democracy.<sup>39</sup> We are accustomed through the modern period, not through Thomas and Aristotle, that we believe that there must be one rule of universal validity, regardless of time and place. That was not the old tradition. The old tradition was much more flexible and admitted a great variety of arrangements on different levels. But what is insisted upon<sup>40</sup> is that you must have examples for saying which level these various arrangements.<sup>41</sup> In other words, you can say for these savage people certain very savage punishments are necessary. But you have to add savage in both cases in order to be exact and truthful. You cannot use neutral terms, or I don’t know what you would say, “underdeveloped” is already a value term—

**Student:** Aspiring, or emerging!

**LS:** But that is still—because you think of the perfected. Say, type Alpha, of type Alpha, and then no one can criticize. Yes, a question?

**Student:** There seems to be another element in his discussion which seems to be reminiscent of social science, if I am not mistaken. Montesquieu’s discussion of punishment seeks to avoid condemning a regime as much as possible—

**LS:** Yes, but what is his motive?

**Student:** Yes, well his motive is one of prudence—

**LS:** No, yes, he is a decent man and he doesn’t wish to create unnecessary troubles for his readers. And therefore he says to the Italians, the Germans, and even the French who read him, “Under no circumstances do I wish to transform you into a disloyal citizen.” And he uses all means at his disposal to prevent such a misfortune. But that is obviously not the purpose or intention of present-day scientific social science. The utmost you can say, and that has been said by some people, [is] that they are unknowingly conformist. That may be, but surely we are not intentionally conformist. They would reject this suggestion with great indignation. I know that from experience! But in Montesquieu this quasi-conformism is conscious and has nothing whatever to do with his notions of scientific method.



**Student:** But what seems interesting to me is that Mr. Cropsey once said that the man is somehow responsible for the way in which he is misunderstood. There seems to be something in Montesquieu's method that would encourage the far out relativism of social science—

**LS:** Yes, there is a certain dimension in which that<sup>42</sup> is true but we have not yet sufficient evidence for that, and that is religion. As regards religion he can be said to be relativistic.

**Student:** But, even in his approach, the way that he talks—maybe because of the fact that he starts from something like security rather than virtue. That makes him more acceptable to social science than Aristotle.

**LS:** Yes, I wanted to bring that up but it is not as simple as that, but there is an ingredient of truth. Now what is in the ordinary presentation of the issue? It is said that social science relativism is necessary because of the fundamental distinction between the "is" and the "ought." You must have heard this formula. Science, any particular social science, deals only with the "is" and has nothing whatever to do with the "ought."<sup>43</sup> Therefore it cannot judge. When it says of a certain political leader, "He is a charismatic leader," there is of course not a value judgment. That is merely one of these Alpha-Beta concepts to which I have referred before. A man can be a charismatic leader and just be a clever swindler according to Max Weber's authoritative interpretation. Whereas the simple man would think that the charismatic leader means something resplendent and admirable. That is wholly unintentional, says Max Weber, although it is not quite credible.

Now this is the "is" and "ought" distinction. But this is not quite true. This is not the basis of social science because there is no reason whatever if we had knowledge of the "ought" why we should not apply that knowledge when speaking of the "is." The true premise of social science relativism is the denial of the possibility of knowledge of the "ought." You can<sup>44</sup> empirically find out what an individual or a nation thinks is the "ought." That is mere fact, but not knowledge of the "ought." It is knowledge of the fact or what these people think about the "ought." Now this is the crucial point: there is no knowledge of the "ought" possible.<sup>45</sup> This is<sup>46</sup> absolutely at variance with Montesquieu's opinion. And even, I would say up to utilitarianism in the—no, up to John Stuart Mill's version of utilitarianism, knowledge of the ought is possible. That was changed only in the very last decades of the 19th century. And out of this social science relativism grew.<sup>47</sup>

The point to which Mr. Schaefer referred: There is a great difference between Montesquieu's moral teaching and Aristotle's moral teaching. Surely. If one analyzes it, one comes ultimately back to the following distinction, and this is the conflict in philosophy from the beginning: One school says the good is identical with the pleasant. And from this it follows that the noble and the just things, the moral things proper, are to be pursued never for<sup>48</sup> [their] own sake but for the sake of the pleasure, or the avoidance of pain which they bring. The opposite school<sup>49</sup> says no, the just and noble is choiceworthy for its own sake, and the consideration of pleasure can only be secondary. This issue emerged in classical antiquity and lasted until modern times, and in a way it is

still with us. However great the differences between men like Hobbes and Locke and the ancient hedonists may be—and I would not minimize them, I do not wish to minimize them<sup>50</sup>—it is extremely important that they are hedonists. And this hedonism is<sup>51</sup> also effective in Montesquieu, although we have not yet been able to make it out.<sup>52</sup> What has happened then [is] at the end of the 19th century<sup>53</sup> some people believed to see that this issue between hedonism and moralism proper cannot be settled by reason<sup>54</sup>. Therefore we do not know—we have no knowledge of the “ought” in any way. It is more complex but I thought that I should point this out.

Now in one of the two papers which I read, with reference to the distinction between political science and political philosophy to the effect that political science may be unable to settle a question but political philosophy might or must then settle it,<sup>55</sup> that is an impossible position because, if the issue is beyond the power of human reason and therefore cannot be settled by political science, it is also beyond the power of political philosophy. I hope that is clear. I mean, it may be impossible but it cannot be non-rational. I thought I should mention this point. Yes, Mr. Schaefer?

**Student:** I wanted to ask you one more question about Book XII. It seems to me that in the advice which Montesquieu is giving with regard to different religions, [that they] must be allowed and so forth, Montesquieu is clearly—toleration, and he doesn't really deal with the question that the toleration might undermine certain regimes more than others. For example, it might be more compatible with liberal democracy than with a despotism or<sup>56</sup> a monarchy. It seems to me that he might be reassuring the prince and the despot a little more than he believes they should be—

**LS:** Yes, that we must see and the books on climate will be very important, but later chapters too, how far this goes.<sup>57</sup> We had mentioned an example much later which made an impression on me on my first reading and I could never forget it. Montesquieu's starting point is self-preservation and<sup>58</sup> this leads in itself to the denial of the [natural] right to slavery, as we will see very soon<sup>59</sup>. We have already found a remark to this effect. There is no natural right to kill a man unless you are in danger of being killed by him.<sup>60</sup> Therefore you cannot derive a right to enslave him from a prior right to kill him.<sup>61</sup>

Now, there is this following story: A pupil of Hobbes, Sir William Petty, of whom some of you may have heard—the founder of political arithmetic, i.e. what later on<sup>62</sup> came to be called political economy—had figured out the value of a human being. And he went about it in a very practical way<sup>63</sup>; [he asked], what does a human being fetch on the slave market in Algiers.<sup>64</sup> That is scientific [and] objective.<sup>65</sup> I do not know what it was, say, a couple of pounds, and then Montesquieu said, “that is not true.” What Petty found out may have been the value of an Englishman but in other countries a human life is worth much less. And in some cases the value approaches zero and even may go beneath zero.<sup>66</sup> These things have happened before and I am afraid they will happen in the future.

So what is the point? What is the application of that? If there is such an inevitable worthlessness of human life, what is the practical significance of the right to self-preservation? Also, zero or beneath zero.<sup>67</sup> There are situations in which the natural right,

however basic, ceases to be of any practical importance without anybody's fault—I mean a tyrant or despot—but by the nature of the situation. If you call this relativism, then Montesquieu was a relativist. But I would say that since this is so clearly limited to cases of this kind, and the primacy of self-preservation was a guide,<sup>68</sup> the implications of self-preservation remain intact and I would hesitate to call it relativism.<sup>69</sup>

Now we must turn to Book XIII, which is the last book devoted to freedom.<sup>70</sup> Books XI to XIII are devoted to freedom, and in a way Books IX and X belong to that issue.<sup>71</sup> This deals with the relation of public revenue and liberty. Now, this Book, as you will see from its heading, is not devoted to laws. This is not the first case. In Books III and VIII “laws” also doesn't occur in the title of the Book. But here<sup>72</sup> it has a more specific meaning. Let us begin with the first paragraph.

**Mr. Reinken:** “The public revenues are a portion that each citizen gives of his property, in order to secure or enjoy the remainder.”<sup>i</sup>

**LS:** Yes, more literally, “in order to have the security of the other or in order to enjoy it agreeably.”<sup>73</sup> Taxes are the price for security, not indeed of life, but of property. But we know that there is a connection between life and property which doesn't mean exorbitant properties but some property. Food is the clearest case of property without which we cannot live, as Locke has shown so beautifully. You cannot live without eating. And you cannot eat anything without making it your property in a way that no one can take it from you any more—an extreme case of appropriation, but in a wider sense, property belongs to life.<sup>74</sup>

What I said before, self-preservation shifts, if it can, easily into comfortable self-preservation.<sup>75</sup> So the security of the other half and the pleasant enjoyment of it doesn't make any difference.

Next paragraph.

**Mr. Reinken:** “To fix these revenues in a proper manner, regard should be had both to the necessities of the state and to those of the subject. The real wants of the people ought never to give way to the imaginary wants of the state.”

**LS:** *The danger comes*<sup>76</sup> from the side of the state, naturally because Montesquieu is an individualist. He starts from the individual and his right and his needs.

Skip the next paragraph.

**Mr. Reinken:** “Nothing requires more wisdom and prudence than the regulation of that portion of which the citizen is deprived, and that which he is suffered to retain.

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 1, 207.

“The public revenues should not be measured by the people’s abilities to give, but by what they ought to give; and if they are measured by their abilities to give, it should be considered what they are able to give for a constancy.”<sup>ii</sup>

**LS:** No, “and if one measured in regard to what the people can give—”

**Mr. Reinken:** “What they can give all the time.”

**LS:** Yes,<sup>77</sup> you should not take a particularly fertile year and say what they could give.

In the next chapter he takes issue<sup>78</sup> [with] the view that the greatness of the taxes is good in itself. Let us read the third paragraph.

**Mr. Reinken:** “The effect of wealth in a country is to inspire every heart with ambition: that of poverty is to give birth to despair. The former is excited by labor, the latter is soothed by indolence.”<sup>79</sup>

“Nature is just to all mankind, and repays them for their industry: she renders them industrious by annexing rewards in proportion to their labor. But if an arbitrary prince should attempt to deprive the people of nature’s bounty, they would fall into a disrelish of industry; and then indolence and inaction must be their only happiness.”<sup>iii</sup>

**LS:**<sup>80</sup> You see there is again another reference to “nature” as just. Nature is just. Nature recompenses men for the pains they take. So the fault lies with men, not with nature. This will be qualified by him considerably, as you can imagine, from what I quoted about his criticism of Sir William Petty. That is clearly a question, whether nature is always just. But he would still say [that] even in a very poor country, it does make a difference whether you work hard<sup>81</sup> [or] whether you are lazy. To that extent he would not have to retract it.

You remember the remark he made in Book XII when he discussed homosexuals, the praise of nature there. This is the same spirit.

Now let us read the headings of chapter three and<sup>82</sup> seven.

**Mr. Reinken:** “Of Taxes in Countries where Part of the People are Villains or Bondmen.”

“Of Taxes in Countries where Villanage is not Established.”

**LS:** Yes,<sup>83</sup> and four, five, and six deal with villainy under various conditions. Now it is clear that which is the preferable case: having serfs or no serfs? What would you expect?

**Student:** None.

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<sup>ii</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 1, 207.

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 2, 208.

**LS:** Yes, and we can prove that. Let us read the first paragraph of chapter seven.

**Mr. Reinken:** “When the inhabitants of a state are all citizens, and each man enjoys his property with as much right as the prince his sovereignty, taxes may then be laid either on persons, on lands, on merchandise, on two of these, or on all three together.”<sup>iv</sup>

**LS:** Yes, you see the formula here. If everyone possesses for his domain what the prince possesses for his empire, he is as much a master as the prince.<sup>84</sup>

Montesquieu discusses these three kinds of taxes. And Mr. R. to which does it refer, the three? Income tax—

**Student:** Merchandise—

**LS:** How would you call it today? Let us call it indirect tax, not property tax and not income tax.

**Student:** Is he the origin of that notion of direct and indirect taxes? Do you know?

**LS:** That I do not know. He does not call them indirect taxes.

**Student:** No, first in<sup>85</sup> chapter 14 in the very first sentence—

**LS:** Oh yes, but that has a different meaning. We will come to that.

**Student:** I learned from this editor that the man who had asserted in Montesquieu’s time very emphatically that it is good to have high taxes in order to compel the people to work harder was Hume<sup>86</sup>. And Montesquieu opposes Hume in this particular point.

**LS:** Let us consider why he prefers indirect taxes. That is in the third paragraph before the end of chapter seven.

**Mr. Reinken:** “The duties felt least by the people are those on merchandise, because they are not demanded of them in form. They may be so prudently managed that the people themselves shall hardly know they pay them. For this purpose it is of the utmost consequence that the person who sells the merchandise should pay the duty. He is very sensible that he does not pay it for himself; and the consumer, who pays it in the main, confounds it with the price. Some authors have observed that Nero had abolished the duty of the five-and-twentieth part arising from the sale of slaves; and yet he had only

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<sup>iv</sup> In original: “When the inhabitants of a state are all free citizens, and each man enjoys his property with as much right as the prince his sovereignty, taxes may then be laid either on persons, on lands, on merchandise, on two of these, or on all three together.” *Spirit of Laws*, vol. I, bk. XIII, ch. 7, 209.

ordained that it should be paid by the seller instead of the purchaser; this regulation, which left the impost entire, seemed, nevertheless, to suppress it.”<sup>v</sup>

**LS:**<sup>87</sup> This editor makes this note, that, regarding Montesquieu’s strange preference, he forgets that indirect taxes weigh relatively more on the poor, especially if the tax is laid on objects of daily need. Montesquieu was fully aware of that and discusses it later when he speaks of the salt tax in the French monarchy. He doesn’t have this intention. But it is still something quite strange. Why are indirect taxes preferable to the other ones?<sup>88</sup>

**Student:** Because you don’t notice them.

**LS:** Yes! And they don’t sense it. Now, what is freedom ultimately? A sense of security. A sense of security, yes. And therefore it is perfectly compatible.

In the last paragraph of chapter 7 he makes clear the connection between indirect taxation in the way in which he demands them and freedom. There can be no searches all the time in the homes of citizens. This contributes obviously to freedom. Let us read the next chapter with the heading.

**Mr. Reinken:** “In what Manner the Deception is Preserved.”

**LS:**<sup>89</sup> In the French it is a bit more delicate, “the illusion.” But I would not deny that a deliberately preserved illusion is a kind of—but still we should not be too indelicate.

**Mr. Reinken:** “In order to make the purchaser confound the price of the commodity with the impost, there must be some proportion between the impost and the value of the commodity: for which reason there ought not to be an excessive duty upon merchandise of little value. There are countries in which the duty exceeds seventeen or eighteen times the value of the commodity. In this case the prince removes the disguise: his subjects plainly see they are dealt with in an unreasonable manner, which renders them most exquisitely sensible of their servile condition.”<sup>vi</sup>

**LS:**<sup>90</sup> You see how carefully one must read Montesquieu. Is the Machiavellianism in this paragraph not part of his satire on monarchy; that he says, as it were to Cortier,<sup>vii</sup> “well, of course, I am in the know and I will not show any populist feelings. I know one must deceive the people but the question is how does one deceive them best?”<sup>91</sup>

We must consider the nimbleness of Montesquieu’s mind and not simply quote these passages without considering the context.

Yes, let us read the next sequel.

<sup>v</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 7, 210–11.

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 8, 211.

<sup>vii</sup> Reference unknown.

**Mr. Reinken:** “Besides, the prince, to be able to levy a duty so disproportioned to the value of the commodity, must be himself the vendor, and the people must not have it in their power to purchase it elsewhere: a practice subject to a thousand inconveniences.

“Smuggling being in this case extremely lucrative, the natural and most reasonable penalty, namely—”

**LS:** No, “the natural penalty, that penalty which reason demands.”

**Mr. Reinken:** “—the confiscation of the merchandise, becomes incapable of putting a stop to it.”<sup>viii</sup>

**LS:**<sup>92</sup> I would like to point out here again<sup>93</sup> we have another case where reason and nature are identified. “The natural penalty is the one which reason demands.” This [underlies]<sup>94</sup> his whole discussion of penalties in Book XII. Yes?

**Student:** Is this indicated also in Book XII where he says that this is the right course taken from the nature of the thing.

**LS:** Yes.

**Student:** By that he means the reason.

**LS:** Yes, what is in the natural course,<sup>95</sup> the reasonable course is that which corresponds to the nature of [the] thing. In other words, to punish a petty theft more severely than murder is against nature because the damage which you inflict for stealing ten cents from a man is in no proportion to the damage inflicted by killing him.<sup>96</sup> There are interesting cases: if the man needs his ten cents badly, you know if he needs the hot soup with the ten cents he has begged from you on the Midway, then it would be a great damage. Yes.

**Student:** How do you explain the fact that in Book XII in discussing the principles of the four kinds of punishment, he describes all four of them as according to nature and that only the last one, the one that is most severe, as according to reason?

**LS:** Have you made a precise statistic of that?

**Same Student:**<sup>97</sup> My guess, at least with regard to the first kind of punishment, the first and the second, with regard to religion and morals, he was questioning whether reason ever dictated at all that—

**LS:**<sup>98</sup> I cannot answer your question because I haven’t made those statistics and you haven’t made them.

**Same Student:** I beg your pardon.

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<sup>viii</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 8, 211–12.

**LS:** The statistics, whether he avoids reason or nature in one of the two cases—

**Same Student:** I know that in his specific discussion in that one chapter of Book XII, he says, if by saying what I say here is derived from nature and at the end of it he says, all that I have said here is according to nature. But only in the discussion of the fourth punishment does<sup>99</sup> [he make] the statement that this is produced from reason—

**LS:** You know that?

**Same Student:** Yes. I don't know about the Book as a whole but in that chapter this is true.

**LS:** Yes, I do not know. The simplest explanation would be that<sup>100</sup> you could speak of nature, the rational punishment, even in cases of a crime which is not truly a crime.

**Same Student:** [inaudible words]

**LS:** Yes, but I would want to be sure of our ground.

**Same Student:** The objection to that is that is as far as to see how he could object to the punishments of the violation of the—are not according to reason also.

**LS:** Yes, now here we are on surer ground: the fact that he simply identifies the two considerations here, as we have seen. Yes?

**Same Student:** There seems still to be some distinction when he [says that] this is the course drawn from the nature of the thing and the cases which concern natural law.

**LS:** Yes, but where did he speak of natural law? Because if he speaks of natural right, *droit naturel*, that is not the same as *loi naturelle*. Is that not true?

**Same Student:**<sup>101</sup> I'm thinking of the later passages.

**LS:** Oh no, we are not yet prepared for that. Let us cross that bridge when we come to it.

**Student:** When he uses the expression “good in itself” for taxes or for anything—he uses this immensely, “good in itself”—he omits the word nature. Isn't it obvious he is using the same rational self-evidence of nature?

**LS:** No, he denies here that the greatness is good in itself.

**Student:** In other words he seems to be denying a natural theory that must have been held.

**LS:**<sup>102</sup> A theory held by Hume, that I have indicated.<sup>103</sup>



**Student:** Was that theory based on the rational self-evidence of nature?

**LS:**<sup>104</sup> The reason given was that the more taxes, the more people will be compelled to work and this will be conducive to the welfare of the state. People never spoke so much of absolute values as they do in our age.<sup>105</sup>

Then we come in chapter 10 to the question of the strange fact that you pay less taxes in Turkey than in Holland or England and therefore it seems to show that this kind of freedom goes together with despotism.<sup>106</sup> I can only say that the starting point of Montesquieu is a fact. To his best knowledge the Dutch and the English paid more taxes than the Turks or the Persians. And he tried to explain it. The simplest explanation is that these poor fellows who are subject to despots have at least this advantage, this dubious advantage, that they pay less taxes. I do not think that there is any profound problem in that.

He states the principles at the beginning of chapter 12.

**Mr. Reinken:** “It is a general rule that taxes may be heavier in proportion to the liberty of the subject, and that there is a necessity for reducing them in proportion to the increase of slavery. This has always been and always will be the case. It is a rule derived from nature that never varies. We find it in all parts, in England, in Holland, and in every state where liberty gradually declines, till we come to Turkey. Switzerland seems to be an exception to this rule, because they pay no taxes.”<sup>ix</sup>

**LS:**<sup>107</sup> Then he explains the seeming exceptions like Switzerland and Rome. We do not have to go into that. The key point is this, and the economics books will discuss this in connection with the public debts.

**Student:** He must have meant this as something more than an explanation of observed facts if he’s willing to say that it is something that has been and something that always will be.

**LS:** Yes,<sup>108</sup> but the starting point were these facts and the reason<sup>109</sup> we can see in the third paragraph of this chapter: “In spite of the exceptions, the general rule still holds.” Go on.

**Mr. Reinken:** “In moderate governments there is an indemnity for the weight of the taxes, which is liberty. In despotic countries there is an equivalent for liberty, which is the lightness of the taxes.”<sup>x</sup>

**LS:** Yes?

**Student:** That’s no particular reason really why the taxes—

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 12, 214.

<sup>x</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 12, 214.

**LS:**<sup>110</sup> I think what he has in mind is that you cannot inflict all evils at the same time.<sup>111</sup> As a despotic government it must abstain from other evils which it can inflict on its citizens.

**Student:**<sup>112</sup> There must be something to the notion that taxes sort of rise as high as they can, and so therefore in any free government they will rise higher because they can rise higher. He never gives any reason why in a moderate government taxes should be raised. He just says that you can raise them higher.

**LS:** He doesn't speak of the public taxes which might be higher, that is true.

The first paragraph of chapter 10 gives the causes. In despotic governments if you keep pushing the taxes they just stop tilling the land.<sup>113</sup> This did happen in history. And in the moderate governments the people get a return on their taxes—

**Student:** All that says is that you can push taxes higher in a moderate government and you won't have the same bad effects. But the reasons why,<sup>114</sup> if you look at this country, taxes went higher because of the war and so forth but they could go higher.

**LS:** No,<sup>115</sup> he could not in any way foresee the situation as we have it now. That would not be fair as a criticism of him. But what did you want to say?

**Student:** I wanted to ask a more general question that is connected with that. He says this is natural but he doesn't say that it is reasonable or that one ought to—

**LS:** Yes, but why is what nature dictates, as it were, necessary even if you do not prove that it is reasonable in itself? Why is it nevertheless crucial for reason?<sup>116</sup> If it is natural and unchangeable you have surely to adapt yourself to it, and your laws, to the extent that there is an obvious relation between reason and nature even if the natural should not be reasonable.

**Student:** But there is also, in the connection, at the end of that first paragraph in chapter 12 a sort of dig at nature. The Swiss pays four times as much to nature as<sup>117</sup> [does] a Turk.

**LS:** If there is a despotism in Switzerland: it would be the despotism of nature, not of the government.

**Student:** And nature is not so just.

**LS:** Oh I see! Why should the poor Swiss be so disadvantaged compared to the Dutch. Yes, this leads to greater depth than we are prepared for.

**Student:** Or nature is nastier than the Turkish Sultan.

**LS:** That could also be.<sup>118</sup> We will come to nature very soon in the unmistakable form of climate.

**Student:** Doesn't he say to some extent though that nature, because nature has made life so hard for the Swiss there are so few people willing to take . . . .

**LS:** That could be. That surely is more attractive. Yes?

**Student:** I think that the principle behind all of this seems to be the idea of indemnity or balance, that if you get a lot of taxes you'll get a lot of liberty. Everything is balanced so that the Swiss will have to pay nature but they get something else in return.

**LS:** But what would be the alternative? Let us assume that the Swiss had been treated by nature in a more kindly manner. Then they would be richer and then they might be in the same situation as the British and the Dutch are. That is the point.

**Student:** You pay for what you get from nature it seems.

**LS:** Yes, but he said it in another way before when he spoke of the justice of nature. If you work hard then you will become richer than if you are lazy.

**Student:** [inaudible words]

**LS:** Yes, some right. It would work out this way otherwise he will abandon cultivation of the land and run into the forest. Montesquieu speaks of it. So the despotic government cannot go in its oppression beyond a certain point.

Incidentally, we should not forget that these remarks<sup>119</sup> [by] Montesquieu are also meant to be recommendations to the French government. We must never forget that. And he always puts this dilemma to the French government. If you want to be despotic then behave like the Sultan, but since you claim to be something better than the Sultan then behave accordingly.

**Student:** [inaudible words]

**LS:** The Swiss case seems to show that nature can be generous in different ways. The fact that nature has ungenerous [aspects] does not preclude the possibility of liberty.<sup>120</sup>

There are other factors involved. We do not know them yet, for example, the climate.

Let us turn to the first paragraph of chapter 15.

**Mr. Reinken:** "To these great advantages of liberty it is owing that liberty itself has been abused. Because a moderate government has been productive of admirable effects, this moderation has been laid aside; because great taxes have been raised, they wanted to

carry them to excess; and ungrateful to the hand of liberty, of whom they received this present, they addressed themselves to slavery, who never grants the least favor.”<sup>xi</sup>

**LS:**<sup>121</sup> Here freedom rather than nature seems to be the ground of wealth. But there is no contradiction. Both nature, good territory, and good government go together. Yes.

**Student:** There is also a description of what was going on in France at the time, taxes were being raised and—

**LS:** Yes, especially as I learned from the commentator, the salt tax was one of the greatest grievances.

Let us read the last chapter.

**Mr. Reinken:** “‘Of the Farmers of the Revenues.’

“When the lucrative profession of a farmer of the revenue becomes likewise a post of honor, the state is ruined. It may do well enough in despotic governments, where this employment is oftentimes exercised by the governors themselves. But it is by no means proper in a republic, since a custom of the like nature destroyed that of Rome. Nor is it better in monarchies, nothing being more opposite to the spirit of this government. All the other orders of the state are dissatisfied; honor loses its whole value; the gradual and natural means of distinction are no longer respected; and the very principle of the government is subverted.”<sup>xii</sup>

**LS:** That has to do with the manner in which the revenue is collected, whether by independent tax farmers or by the government. He is<sup>122</sup> in favor of a governmental arrangement of that.

We don’t have enough time and we must say a few words about the beginning of the next book because now a new dimension is opened. Hitherto we were concerned strictly with legal and political matters. Now we come to what is the traditional way of looking, the sub-political and the influence it has on the political—in the first place climate, or to use a more general term, nature. And here this great problem of nature is taken up.

How far is nature important for man’s moral and intellectual life? This is the broad question instructing this section.<sup>123</sup> We know that this is of crucial importance for politics in the following way, in the way which still affects us today, namely, regarding equality and inequality. Is equality natural or is it not natural? That is the question raised from the very beginning.<sup>124</sup> This question easily divides itself into the inequality of individuals, which is easily granted, I believe, by people who are not fanatics of sorts because everyone’s experience tells you that we are not only different from each other but also unequal in politically important respects, say, intelligence. But, the second question is the

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<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 15, 216.

<sup>xii</sup> *Spirit of Laws*, vol. I, bk. XIII, ch. 20, 220.

inequality of nations and races. That is<sup>125</sup> a very hot issue today as it has been also in the past, perhaps today hotter than in the past.<sup>126</sup>

This whole issue was discussed<sup>127</sup> with especial clarity by Aristotle in the *Politics*.<sup>128</sup> Montesquieu knew it and there were quite a few other books written in the meantime.

I will mention only one point for the discussion of our subject. When Aristotle speaks of it in the seventh book of the *Politics*, he distinguishes three kinds of regions: hot regions, Asia; cold regions, Northern Europe; and the temperate region which is above all Greece.<sup>129</sup> The people of the hot regions are intelligent but cowardly. The people of Asia Minor were very clever in the arts but were subjects of despots and would accept the lead without any reservation. In the cold regions, they are courageous but deficient in intellect. And the people in the temperate zone, they are in the middle. That is the nicest human material as Aristotle says to the edification of his countrymen and I believe also because he believed it.<sup>130</sup>

What is the most striking difference between Montesquieu's scheme and Aristotle's scheme?

**Student:** Well, first of all he says that [inaudible words]

**LS:** In other words, the partition into three which Aristotle uses is not so noticeable in Montesquieu.<sup>131</sup> He generally uses the distinction between the people of the north and the people of the south.<sup>132</sup> What is the consequence of that? Which are better?

**Student:** The north.

**LS:** The north. And why is this important in the whole schema of Montesquieu? Which is the most marvelous political arrangement he has ever seen?

**Student:** England.

**LS:** England. And where does this come from, this English constitution?

**Student:** Fifty degrees north latitude.

**LS:** From the forest of Germany.<sup>133</sup> So everything confirms itself. Now these remarks we read today are rather funny but they are not without some empirical basis. What is the connection? What do the southern people have that the northerners do not have?

**Student:** Instead of intelligence as Aristotle said, sensibility.

**LS:** And "imagination, taste, sensibility, and vivacity."<sup>134</sup><sup>xiii</sup> One can immediately see the southern Frenchman coming to England was surely impressed by the calmness of the

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 2, 222.

British compared with the vivacity of the French and especially of the Italians. Let us read.

**Mr. Reinken:** “In cold countries they have very little sensibility for pleasure; in temperate countries, they have more; in warm countries, their sensibility is exquisite. As climate are distinguished by degrees of latitude, we might distinguish them also in some measure by those of sensibility. I have been at the opera in England and in Italy, where I have seen the same pieces and the same performers; and yet the same music produces such different effects on the two nations: one is so cold and phlegmatic, and the other so lively and enraptured, that it seems almost inconceivable.”<sup>xiv</sup>

**LS:** Yes,<sup>135</sup> I think no one would deny the facts. Whether his explanation is correct is another matter. Where is his passage about his own observations?

**Mr. Reinken:** “I have observed the outermost part of a sheep’s tongue—”

**LS:** We don’t have to read it, but with a microscope! He has observed it under a microscope, which probably no one had done before him.<sup>136</sup> So he has the most advanced scientific knowledge at the bottom of his doctrine. But fortunately he has some observations of other kinds.

Let us go on where we left off after the opera section.

**Mr. Reinken:** “It is the same with regard to pain, which is excited by the laceration of some fibre of the body. The Author of nature has made it established rule that this pain should be more acute in proportion as the laceration is greater: now it is evident that the large bodies and coarse fibres of the people of the North are less capable of laceration than those delicate fibres of the inhabitants of warm countries; consequently the soul is there less sensible of pain. You must flay a Muscovite alive to make him feel.”<sup>xv</sup>

**LS:**<sup>137</sup> The point to which I would like to draw your attention is “the Author of nature,” which occurs here all of a sudden in connection with the strictly mechanical explanation of the phenomenon in question. In the second paragraph of the next chapter, chapter 3, he speaks of what nature did without referring to the author of nature. This theory of Montesquieu was<sup>138</sup> attacked very much on account of his doctrine of the climate. But that goes without saying.

Let us read the third paragraph of chapter 3.

**Mr. Reinken:** “As a good education is more necessary to children than to such as have arrived at maturity of understanding, so the inhabitants of those countries have much greater need than the European nations of a wiser legislator. The greater their sensibility, the more it behooves them to receive proper impressions, to imbibe no prejudices, and to let themselves be directed by reason.

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<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 2, 223.

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 2, 223.

“At the time of the Romans the inhabitants of the north of Europe were destitute of arts, education, and almost of laws; and yet the good sense annexed to the gross fibres of those climates enabled them to make an admirable stand against the power of Rome, till the memorable period in which they quitted their woods to subvert that great empire.”<sup>xvi</sup>

**LS:** And what happened to this wonderful, northern people then? After they had gone out of their forests and destroyed the Roman empire?

**Student:** Well, first the dark ages and then—

**LS:** Yes, but<sup>139</sup> you must not forget a very important fact. They became converted to Christianity.<sup>140</sup> When Montesquieu speaks of our institutions, one must analyze it, what does he mean? Is this an old Nordic heritage? Or it is Christian heritage?

You see here the question of climate becomes very important because Christianity<sup>141</sup> stems from the hot climates.<sup>142</sup> There is a great difficulty in the mixture of the northern and the southern ingredients. Exaggerating a bit, one can say that according to Montesquieu, the superiority of the moderns to the ancients is due primarily to the climate, to nature, and not to any relative teacher. That one could say.

You have seen here the word “prejudice” which he had used before, which is<sup>143</sup> in quite common use since that time, since the 18th century.<sup>144</sup> It would be interesting to study that because in the classical Latin it doesn’t occur in this meaning at all, as far as I know. It means simply a previous judgment, a prior judgment.<sup>145</sup> It became identical with error, or with a certain kind of error, in a more recent development. The Greeks spoke of opinion but not of prejudice. That is interesting in itself.

A word only about the<sup>146</sup> [next] chapter, read only the heading.

**Mr. Reinken:** “Cause of the Immutability of Religion, Manners, Customs, and Laws in the Eastern Countries.”

**LS:** Now when you read this chapter you will see the last sentence and this is what it makes.

**Mr. Reinken:** “This is the reason that the laws, manners, and customs, even those which seem quite indifferent, such as their mode of dress, are the same to this very day in eastern countries as they were a thousand years ago.”<sup>xvii</sup>

**LS:** That is a very little thing that he has religion in the title and avoids it in the text, where it is less visible. [It is] contrary to a very general rule where people would say the terrible things rather somewhere in the middle of a long chapter than in the heading of a chapter.

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<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 4, 225.

<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 4, 225.

He was accused at his time, I read here, because he had asserted a bond between immutability and religion and the hot climate and science.<sup>147</sup> Whereas there is progress in science and so on, there is no progress in religion.<sup>148</sup> This has something to do with climate.

**Student:** These eastern countries he is referring to in the century just before him, Christianity had taken its largest set-back in Asia minor in the 7th and 8th centuries.

**LS:** Yes<sup>149</sup>.

**Student:** [inaudible words]

**LS:** Yes, that is true: the corrupt government of Byzantium and the barbaric but not corrupt government of Mohammed. That is what he alluded to.<sup>150</sup>

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<sup>1</sup> Deleted "Well."

<sup>2</sup> Deleted "well."

<sup>3</sup> Deleted "You know."

<sup>4</sup> Deleted "Another;" moved "point."

<sup>5</sup> Deleted "LS: Where? Where?"

<sup>6</sup> Deleted "Well."

<sup>7</sup> Deleted "Well."

<sup>8</sup> Deleted "Student: right."

<sup>9</sup> Deleted "Well, the simple point."

<sup>10</sup> Deleted "And."

<sup>11</sup> Deleted "You know, that."

<sup>12</sup> Deleted "Well."

<sup>13</sup> Deleted "that this part."

<sup>14</sup> Deleted "No, no let us first..."

<sup>15</sup> Deleted "sure."

<sup>16</sup> Deleted "Well."

<sup>17</sup> Deleted "of this period."

<sup>18</sup> Deleted "Well."

<sup>19</sup> Deleted "inside or what have you."

<sup>20</sup> Deleted "So."

<sup>21</sup> Deleted "that."

<sup>22</sup> Deleted "you know."



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- <sup>23</sup> Deleted "Yes."
- <sup>24</sup> Deleted "Or."
- <sup>25</sup> Deleted "Student: Political liberty.  
LS: No, no, that is not the ultimate end."
- <sup>26</sup> Deleted "in other words."
- <sup>27</sup> Deleted "Well."
- <sup>28</sup> Deleted "Now."
- <sup>29</sup> Deleted "Now, of course."
- <sup>30</sup> Deleted "Now."
- <sup>31</sup> Deleted "Now."
- <sup>32</sup> Deleted "And now."
- <sup>33</sup> Deleted "on the good way."
- <sup>34</sup> Deleted "then."
- <sup>35</sup> Deleted "Now."
- <sup>36</sup> Deleted "In other words."
- <sup>37</sup> Deleted "and."
- <sup>38</sup> Deleted "the fact that you have, that."
- <sup>39</sup> Deleted "Is this clear?"
- <sup>40</sup> Deleted "indeed."
- <sup>41</sup> Deleted "Do you see the point?"
- <sup>42</sup> Deleted "of course."
- <sup>43</sup> Deleted "And."
- <sup>44</sup> Deleted "of course."
- <sup>45</sup> Deleted "And."
- <sup>46</sup> Deleted "of course."
- <sup>47</sup> Deleted "Still."
- <sup>48</sup> Deleted "then."
- <sup>49</sup> Changed from "And the other school, the opposite school."
- <sup>50</sup> Deleted "yet."
- <sup>51</sup> Deleted "of course."
- <sup>52</sup> Deleted "Now."
- <sup>53</sup> Deleted "is that."
- <sup>54</sup> Deleted "human reason. And"
- <sup>55</sup> Deleted "now."
- <sup>56</sup> Deleted "say."
- <sup>57</sup> Deleted "Well."

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- <sup>58</sup> Deleted "of course."
- <sup>59</sup> Deleted "the natural right of slavery."
- <sup>60</sup> Deleted "And."
- <sup>61</sup> Deleted "So, we know that."
- <sup>62</sup> Deleted "be."
- <sup>63</sup> Deleted "namely."
- <sup>64</sup> Deleted "You know."
- <sup>65</sup> Deleted "And then Montesquieu said."
- <sup>66</sup> Deleted "Well."
- <sup>67</sup> Deleted "So, in other words."
- <sup>68</sup> Deleted "and it is."
- <sup>69</sup> Deleted "Good."
- <sup>70</sup> Deleted "You know the."
- <sup>71</sup> Deleted "And."
- <sup>72</sup> Deleted "of course."
- <sup>73</sup> Deleted "So."
- <sup>74</sup> Deleted "Yes."
- <sup>75</sup> Deleted "That is so."
- <sup>76</sup> Deleted "in other words."
- <sup>77</sup> Deleted "in other words."
- <sup>78</sup> Deleted "faith."
- <sup>79</sup> Deleted "LS: Yes."
- <sup>80</sup> Deleted "Yes."
- <sup>81</sup> Deleted "and."
- <sup>82</sup> Deleted "then the heading of chapter."
- <sup>83</sup> Deleted "yes."
- <sup>84</sup> Deleted "Now then."
- <sup>85</sup> Deleted "chapter 15 he says, excuse me."
- <sup>86</sup> Deleted "David Hume."
- <sup>87</sup> Deleted "Now."
- <sup>88</sup> Deleted "Student: Because property is secure ...
- LS: No, that is not the point."
- <sup>89</sup> Deleted "Well."
- <sup>90</sup> Deleted "Now."
- <sup>91</sup> Deleted "You know."
- <sup>92</sup> Deleted "Yes, let us stop here."

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- <sup>93</sup> Deleted "here."
- <sup>94</sup> Changed from "And this is, of course, underlying."
- <sup>95</sup> Deleted "well."
- <sup>96</sup> Deleted "of course."
- <sup>97</sup> Deleted "Well."
- <sup>98</sup> Deleted "Well."
- <sup>99</sup> Deleted "there produce."
- <sup>100</sup> Deleted "there could be."
- <sup>101</sup> Deleted "I think."
- <sup>102</sup> Deleted "Well."
- <sup>103</sup> Deleted "No, but...."
- <sup>104</sup> Deleted "Well."
- <sup>105</sup> Deleted "Good."
- <sup>106</sup> Deleted "Well."
- <sup>107</sup> Deleted "And."
- <sup>108</sup> Deleted "sure."
- <sup>109</sup> Deleted "what."
- <sup>110</sup> Deleted "Well...."
- <sup>111</sup> Deleted "If you inflict so many evils."
- <sup>112</sup> Deleted "Well."
- <sup>113</sup> Deleted "And."
- <sup>114</sup> Deleted "I mean."
- <sup>115</sup> Deleted "no but that, of course."
- <sup>116</sup> Deleted "Well."
- <sup>117</sup> Deleted "to or than."
- <sup>118</sup> Deleted "But we must...."
- <sup>119</sup> Deleted "of."
- <sup>120</sup> Deleted "Yes."
- <sup>121</sup> Deleted "Now."
- <sup>122</sup> Deleted "exactly."
- <sup>123</sup> Deleted "Now."
- <sup>124</sup> Deleted "And."
- <sup>125</sup> Deleted "of course."
- <sup>126</sup> Deleted "Now."
- <sup>127</sup> Deleted "especially."
- <sup>128</sup> Deleted "And, of course."

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<sup>129</sup> Deleted “Now.”

<sup>130</sup> Deleted “Now.”

<sup>131</sup> Deleted “And.”

<sup>132</sup> Deleted “And.”

<sup>133</sup> Deleted “And.”

<sup>134</sup> Deleted “And.”

<sup>135</sup> Deleted “well.”

<sup>136</sup> Deleted “And.”

<sup>137</sup> Deleted “Now.”

<sup>138</sup> Deleted “of course.”

<sup>139</sup> Deleted “still.”

<sup>140</sup> Deleted “So.”

<sup>141</sup> Deleted “is, of course.”

<sup>142</sup> Deleted “And.”

<sup>143</sup> Deleted “of course.”

<sup>144</sup> Deleted “And.”

<sup>145</sup> Deleted “And.”

<sup>146</sup> Deleted “last.”

<sup>147</sup> Deleted “So.”

<sup>148</sup> Deleted “And.”

<sup>149</sup> Deleted “yes, sure.”

<sup>150</sup> Deleted “Good. Now next time we will continue the discussion of climate.”

**Session 13: February 15, 1966**

**Leo Strauss:** You have seen clearly that Book XV is surely an attack on slavery. And there can be no doubt about that. And you have also sensed the difficulty of ascribing to Book XIV a precise subject. Books XV-XVII we know, climate and various kinds of slavery. But what is the more specific subject of Book XIV? That is hard to say. But one can of course say that Book XIV is meant to establish the importance of climate in general. And then he takes various examples which have nothing to do with the issue of slavery or freedom in order to prove the general importance of climate.

Now there are a few points. For example, I was quite surprised when you discussed the chapter on England<sup>1</sup>—the English climate and its effect on the English, so many suicides<sup>2</sup>—that you did not consider the connection between this chapter and *the* chapter on England, Book XI, chapter 6. This might have been useful.<sup>3</sup>

One more point. You referred frequently to the law of nature which commands self-preservation. Montesquieu mentions there is such a law, but is this the true basis of Montesquieu's own thought?<sup>4</sup> What is the alternative interpretation of self-preservation? The duty of self-preservation, that is the traditional interpretation, and therewith the prohibition against suicide, suicide as sin, crime. And the Hobbean view: in Hobbes's view the moral or legal status of self-preservation is not then a duty but a right, and the question is whether that is not also the meaning of Montesquieu.

Finally, I forgot to mention that you made a statistic of the occurrence of climate in chapter 15. I did not make that observation. I'm grateful<sup>5</sup> that you made it. But of course one must not be too literal in such matters. One must, and one must not—that's a matter of judgment—because he speaks<sup>6</sup> frequently of hot and cold countries, and that is also a reference to climate. Thank you very much.

<sup>7</sup>Now let us first make some general remarks about [Book] XIV again.<sup>8</sup> In a sense the transition to the climate is an ascent from the political to the more fundamental. There can be climate without politics, but there can be no politics without climate. And this leads us to the general question: Is political science, the study of political things, not based on natural science? Is it not even perhaps derivative from natural science? The question is not discussed by Montesquieu, but it plays a very great role in Hobbes; and Hobbes is very hesitant in this respect, whether political science necessarily presupposes natural science, derives its principles from natural science, or can be treated entirely independently of it.

Where Montesquieu stands on this general point is not quite clear. He did speak<sup>9</sup> of nature in the first thirteen books, especially when he spoke of natural right. That after all belongs to nature. But why is this example, this crucial example of natural right, not decisive regarding the relation of political science and natural science in general?<sup>10</sup> For the simple reason that natural right is a right of man, not of animals in general. Natural

right is derivative not from nature in general, but from human nature. Man is essentially different—that is implied—from non-man. Otherwise you couldn't speak of rights of man, and natural right is a right of man. Man is the *animal rationale*, [the] rational animal, as he was defined by Aristotle. This is not explicitly said by Montesquieu, at least not in the *Spirit of the Laws* hitherto, but somehow presupposed by him. I do not remember now any discussion of that.

Now the situation changed shortly after Montesquieu, a few years after his death, when Rousseau wrote his *Discourse on the Origin of Inequality*, in which we find the following remarks: "Every animal has ideas since it has senses. It even combines its ideas up to a certain point. And man differs in this respect from the brute only by the more or less. Some philosophers have even asserted that there is greater difference between different men than between some men and some brute. Hence, it is not so much the understanding which makes among the animals the specific distinction of man than as his quality of being a free agent."<sup>i</sup> So freedom, not rationality, is the essential difference between man and the brutes.

But Rousseau doesn't stop here. "But when the difficulties which surround all these questions would leave any room for disputing on this difference between man and animal, there is another very specific quality which distinguishes them, and regarding which there can be no dispute. And that is the faculty of perfecting himself."<sup>ii</sup> This perfection, perfectibility, not freedom, is the *uncontestable* difference between man and the brutes. One can state it without this value term by saying man is distinguished from all other animals by his almost unlimited malleability. Man can adapt himself to all kinds of conditions, whereas lines<sup>iii</sup> are much more limited, as in the case of any other brutes.<sup>11</sup>

This is<sup>12</sup> the prevalent view today. In the present day view<sup>13</sup> evolution is in there—the alleged or true fact that man emerged out of non-man, induced people to say there cannot be an essential difference between man and brutes. Man is only a somewhat different monkey so to speak. Only a difference of degree, not of kind. Well we have heard of brutes solving problems, rats for example when they try to get out of a cage, and making decisions. That's funny. But we must not see only the funny aspect. We must see the seriousness behind it. The serious question is, is there an essential difference between man and brutes, or is there not?<sup>14</sup>

Common sense is of course in favor of the older view. For example, if you read a statement of a famine in India, no one believes that this refers to a famine suffered by monkeys or tigers in India, but to human beings. And there are other examples. Or to take other things, no one has seriously suggested that brutes are capable of being poets or philosophers.<sup>15</sup> When we take the higher ranges of human activities, the difference is so appalling that one will be cured for the rest of one's days from saying there is only a difference of degree between man and the brutes. But the essential difference is of course concealed if we look at the lowest in man, such as the need for food<sup>16</sup> [or] breathing, and

<sup>i</sup> Edition unknown. Perhaps Strauss's own translation.

<sup>ii</sup> Edition unknown.

<sup>iii</sup> Word might also be "lions."

some other things are surely common to man and the brutes. This view now prevailing leads to the consequence that psychologists, or however they call themselves, psycho-sociologists, must attempt to reduce the higher things in man to the lowest. And that is a constant temptation.<sup>17</sup> To what extent this happens in Montesquieu we must observe while we proceed. Let us first turn to the chapter heading of chapter 5.

**Mr. Reinken:** “That those are bad Legislators who favor the Vices of the Climate, and good Legislators who oppose those Vices.”

**LS:**<sup>18</sup> I explained last time that this distinction between good and bad legislators, or any equivalent to it, is not necessarily in conflict with the determinism. That’s clear. Because the good or bad legislators are determined by their knowledge or ignorance to act in the way in which they act. And that they have the knowledge or lack it is<sup>19</sup> itself determined by prior causes. Now let us read the first two paragraphs of this chapter.

**Mr. Reinken:** “The Indians believe that repose and non-existence are the foundation of all things—”

**LS:** “Nothingness.”

**Mr. Reinken:** “—and nothingness are the foundation of all things, and the end in which they terminate. Hence they consider entire inaction as the most perfect of all states, and the object of their desires. To the Supreme Being they give the title of immovable. The inhabitants of Siam believe that their utmost happiness consists in not being obliged to animate a machine or to give motion to a body.

“In those countries where the excess of heat enervates and exhausts the body, rest is so delicious, and motion so painful, that this system of metaphysics seems natural; and Foe, the legislator of the Indies—”

**LS:** That is Buddha.

**Mr. Reinken:** “—was directed—”

**LS:** The historical errors we simply disregard. He became the legislator outside of India but not in India.

**Mr. Reinken:** “—was directed by his own sensations when he placed mankind in a state extremely passive; but his doctrine arising from the laziness of the climate favored it also in its turn; which has been the source of an infinite source of mischief.”<sup>iv</sup>

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<sup>iv</sup> In original: “In those countries where the excess of heat enervates and exhausts the body, rest is so delicious, and motion so painful, that this system of metaphysics seems natural; and Foe, the legislator of the Indies was directed by his own sensations when he placed mankind in a state extremely passive; but his doctrine arising from the laziness of the climate favored it also in its turn; which has been the source of an infinite deal of mischief.”

**LS:** He says only “many evils.”<sup>20</sup> Montesquieu rejects the view that nothing, or nothingness, is the foundation of all things. He rejects this view as false, and explains that error by the climate. But how does he know that it is an error?<sup>21</sup> Perhaps we should read first the next paragraph.

**Mr. Reinken:** “The legislators of China were more rational when, considering men not in the peaceful state which they are to enjoy hereafter—”

**LS:** No,<sup>22</sup> “in which they will be sometimes.” So that it is absolutely undetermined whether this is heaven or the tomb.

**Mr. Reinken:** “—which they will be sometime, but in the situation proper for discharging the several duties of life, they made their religion, philosophy, and laws all practical. The more the physical causes incline mankind to inaction, the more the moral causes should estrange them from it.”<sup>v</sup>

**LS:**<sup>23</sup> The Chinese made all their laws practical. Buddha did not do that. Buddha made all his laws and his philosophy—what would be the alternative to practical?

**Student:** Theoretical?

**LS:** Or speculative.<sup>24</sup> This is the term used in Book IV, chapter 8, fifth paragraph.<sup>25</sup> He has in mind not only Buddha in this connection, which we will see very soon.<sup>26</sup>

What is then Montesquieu’s reason for rejecting Buddhism as wrong, as theoretically false? We see it here. To be a man means to live and to desire to live. It is against nature to desire nothingness. That is a<sup>27</sup> diseased state of the mind which may be explicable in terms of the climate, as in the case of the eastern nations. It reads particularly strangely this chapter today when Zen Buddhism has become so popular in parts of the United States as I happen to know. But the more interesting phenomenon is<sup>28</sup> the role which nothingness plays in existentialism. In the case of the greatest representative, Heidegger, the awareness of some kinship with eastern Asia exists, and plays a considerable role.<sup>29</sup>

This whole sphere is<sup>30</sup> wholly absent from Montesquieu, for whom it goes without saying that Europe, and especially this wonderful island, that blessed spot, is much better than any other place anywhere else in the world. Mr. Schaefer?

**Mr. Schaefer:** I’m wondering whether this could also be an implied reference to the Aristotelian doctrine that the highest activity is an activity of mobility?

**LS:** Yes, Aristotle is of course in this respect surely a westerner. There is no doubt.

**Student:** Could Montesquieu be criticizing—

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<sup>v</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 5, 225–26.



**LS:** No,<sup>31</sup> this is not a question now. Because for Aristotle of course the state of rest<sup>32</sup>, contemplation is at the same time the highest *praxis*,<sup>33</sup> highest action.<sup>34</sup> Aristotle has nothing to do with Buddha. This one can say safely. Let us read the next chapter.

**Mr. Reinken:** “‘Of Agriculture in Warm Climates’

“Agriculture is the principal labor of man. The more the climate inclines him to shun this labor—”

**LS:** In this respect by the way nothing had changed between Montesquieu and Aristotle, who says about the same thing in the First Book of the *Politics*. Agriculture is *the* greatest or most important basic work of man. Today this would be questioned but not entirely because the fact that we don’t need many farmers anymore is due to the fact that farmers have become so productive. You need quantitatively few, but we couldn’t live without what they produce, obviously. Yes.

**Mr. Reinken:** “—The more the climate inclines him to shun this labor, the more the religion and laws of the country ought to incite him to it. Thus the Indian laws, which give the lands to the prince, and destroy the spirit of property among the subjects, increase the bad effects of the climate, that is, their natural indolence.”<sup>vi</sup>

**LS:** Literally, *the* natural indolence. But nevertheless it is rightly understood by the translator. Montesquieu doesn’t say that men are by nature lazy, but these men in hot climates are by nature lazy.<sup>35</sup> In the last paragraph of the preceding chapter he had spoken of their religion, their philosophy, and their laws. Here he speaks only of religion and the laws. Why this silence about philosophy? Perhaps one can say that philosophy belongs to a different order than religion and the laws, namely in so far as the philosopher is a teacher surely of the legislators—that creates no problem—but also, according to Montesquieu’s implicit claim, of religions, not of the founders of religions, that goes without saying, but of the religions as actually established. That could very well be. Let us read the next chapter, where he makes a practical application.

**Mr. Reinken:** “‘Of Monkeny’

“The very same mischiefs result from monkery:<sup>36</sup> it had its rise in the warm countries of the East, where they are less inclined to action than to speculation. In Asia—”<sup>vii</sup>

**LS:**<sup>37</sup> Here the word “speculation” is explicitly introduced lest there be any doubt.<sup>38</sup> Montesquieu<sup>39</sup> doesn’t like it, this institution. We don’t have to read that. Yes?

**Mr. Bruell:** What does he mean by linking speculation with Buddha, the Buddhist system?

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<sup>vi</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 5, 226.

<sup>vii</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 7, 226.

**LS:**<sup>40</sup> After all, [in] life according to the understanding of Christianity by the Catholic Church, contemplation is surely higher than practice. The interpretation of Martha and<sup>41</sup> [Mary] in the New Testament is the most similar<sup>42</sup> example.<sup>43</sup>

... is already in this life, contemplation, to say nothing of the beatific vision which is of course contemplative. This editor says that Montesquieu is blind to the value of the contemplative life altogether.<sup>44</sup> Montesquieu was of course attacked on this score by the ecclesiastical critics of his time.<sup>45</sup> Buddha is for him important, or China or India, as proving the importance of climate, but the practical importance is attached to what happens in Europe. There is no doubt about that. Now let us turn to the next chapter.

**Mr. Reinken:** “An excellent Custom of China.”

**LS:** That is incidentally the central chapter of the book.

**Mr. Reinken:** “The historical relations of China mention a ceremony—”

**LS:** The “relations,” i.e., the reports.

**Mr. Reinken:** “—reports of China mention a ceremony of opening the ground which the emperor performs every year. The design of this public and solemn act is to excite the people to tillage.

“Further, the emperor is every year informed of the husbandman who has distinguished himself most in his profession; and he makes him a mandarin of the eighth order.

“Among the ancient Persians the kings quitted their grandeur and pomp on the eighth day of the month, called *Chorrem-ruz*, to eat with the husbandmen. These institutions were admirably calculated for the encouragement of agriculture.”<sup>viii</sup>

**LS:** Although the subject speaks here only of China, he introduces here also Persia in between.<sup>46</sup> What is the rationale of that? They encourage work, both the Chinese and the Persians. And here the eighth day, or the mandarin of the eighth order—does this ring a bell?

**Mr. Reinken:** On the seventh day rest, on the eighth work?

**LS:** The institution of the Sabbath, the day of rest, and even of a year of rest, the jubilee. This I think he has in mind. In a manuscript which Montesquieu didn’t publish he says, “When leisure has made a country uncultivated, the only way to restore it is to make a list of all the families which have no land as property and to distribute this; for although it be of a great consequence that everyone preserves the property of his goods, the law which has otherwise divisions of land has wish to give to every citizen and not to take away from all.”<sup>ix</sup><sup>47</sup> The editor rightly draws the conclusion that for Montesquieu there is no

<sup>viii</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 8, 227.

<sup>ix</sup> Source unknown. Translation appears to be Strauss’s own.

absolute property right.<sup>48</sup> This is somehow connected with the institutions mentioned here, namely that in order to increase the willingness of people to work<sup>49</sup>, redistribution of property, i.e., the disregard of acquired rights may be perfectly all right. Let us read the next chapter.

**Mr. Reinken:** “‘Means of encouraging Industry’

“We shall show, in the nineteenth book, that lazy nations are generally proud.”<sup>50</sup>”

**LS:** One thinks of Spaniards and such people.

**Mr. Reinken:** “Now the effect might well be turned against the cause, and laziness be destroyed by pride. In the south of Europe, where people have such a high notion of the point of honor, it would be right to give prizes to husbandmen who had excelled in agriculture; or to artists who had made the greatest improvements in their several professions. This practice has succeeded in our days in Ireland, where it has established one of the most considerable linen manufactures in Europe.”<sup>x</sup>

**LS:**<sup>51</sup> Of course the point<sup>52</sup> of honor plays a role not only in Spain, but also in Germany and in other places. So this is not a full explanation of this fact. But why is it necessary to make these laws in Spain? The point of honor is not the only quality of Spain, as we have learned from Montesquieu.

**Student:** Ferocity too, under certain circumstances as against the Indians.

**LS:**<sup>53</sup> That doesn’t apply to Spain as the mother country.

**Student:** The monks.

**LS:** Yes, sure. The power of the Catholic Church. The great thing which was such an important development since the reformations [was] the abolition of the many holy days. And of course the many holy days lasted much longer in the countries which remained Catholic than in those which became Protestant—but also regarding the monks in particular. Now let us read only one passage in chapter 10.

**Mr. Reinken:** “The law of Mohammed, which prohibits the drinking of wine, is, therefore, fitted to the climate of Arabia—”

**LS:** Literally, “is a law of the climate of Arabia,” meaning it is dictated by the climate and therefore it is a good law. In the context it means that. One could say, exaggerating a bit, but trying to bring out the overall intention of Montesquieu, Islam is in a way truer for the climate of Arabia, and to some extent also of north Africa of course, than Christianity is for northern Europe. But we have to wait for further evidence. Let us read the last paragraph of this chapter.

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<sup>x</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 9, 227.

**Mr. Reinken:** “It is the variety of wants in different climates that first occasioned a difference in the manner of living, and this gave rise to a variety of laws. Where people are very communicative there must be particular laws, and others where there is [but] little communication.”<sup>xi</sup>

**LS:** Yes, this subject when we get to it we will take up later. The first part of this sentence contains in germ the so-called materialistic philosophy of history. It is here of course limited only to the needs, and not to the reaction to the needs, i.e., to the production. But since the production is of course secondary to the needs which are satisfied by the production, one can say that’s the basic strata which we have here very clearly.

In chapter 11 he has a lot to say of the bad and unhealthy climate of Palestine and Egypt. Egypt is not very important naturally, but Palestine is of course from the point of view of . . . very important. He speaks here especially of leprosy as allegedly endemic in Palestine and Egypt.<sup>54</sup> This is one reason why the crusades were such a folly, because Europe was free from that plague and then the crusades brought it in.<sup>55</sup> Let us read the third and fourth paragraphs from the end. Leprosy, an imported disease, reminds him of syphilis. So he says also a word about syphilis. Then let us read.

**Mr. Reinken:** “Pious reasons seemed to require that this punishment of guilt be permitted to continue; but the infection had reached the bosom of matrimony, and given the vicious taint even to guiltless infants.”<sup>xii</sup>

“As it is the business of legislators to watch over the health of the citizens, it would have been a wise part in them to have stopped this communication by laws made on the plan of those of Moses.”

**LS:**<sup>56</sup> That is one of the rare cases where he brings in Mosaic laws; in other words, to treat those suffering from syphilis as those suffering from leprosy are to be treated according to the Mosaic law: strict separation from the community and no possible intercourse with them. Now, the last paragraph.

**Mr. Reinken:** “The Turks, who have no such regulations, see the Christians escape this infection in the same town, and none but themselves perish; they buy the clothes of the infected, wear them, and go their way. The doctrine of a rigid faith, which directs their whole conduct, renders the magistrate a quiet spectator.”<sup>xiii</sup>

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<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 10, 228–29.

<sup>xii</sup> In original: “Pious reasons drawn from religion seemed to require that this punishment of guilt should be permitted to continue; but the infection had reached the bosom of matrimony, and given the vicious taint even to guiltless infants.”

<sup>xiii</sup> In original: “The Turks, who have no such regulations, see the Christians escape this infection in the same town, and none but themselves perish; they buy the clothes of the infected, wear them, and proceed in their old way. The doctrine of a rigid fate, which directs their whole conduct, renders the magistrate a quiet spectator.” *Spirit of Laws*, vol. I, bk. XIV, ch. 11, 230–31.

**LS:** A spectator. It makes him inactive.

**Mr. Reinken:** “He thinks that God has done everything, and that he has nothing to do.”<sup>xiv</sup>

**LS:** That is the famous *fatum mahometanum*, as it was called, the fate as understood by the Mohammedans. There is<sup>57</sup> also in Montesquieu’s mind some implication regarding the biblical notion of providence altogether. Now let us see, in chapter 12, the last paragraph.

**Mr. Reinken:** “It is evident that the civil laws of some countries may have reasons for branding suicide with infamy: but in England it cannot be punished without punishing the effects of madness.”

**LS:**<sup>58</sup> One cannot punish it in England because simply the people are innocent. They are simply compelled by the climate. It is terrible . . . to develop the English spleen and therefore to commit suicide. Read Montesquieu’s note on that.

**Mr. Reinken:** “The action of those who kill themselves is contrary to the natural law and to revealed religion.”

**LS:** So he makes it clear that he is orthodox.

**Mr. Reinken:** It wasn’t in the Nugent, and the notes explain that he had to put this in because—

**LS:** Yes, there were troubles. He was severely criticized in the Jesuit and the Jansenist journals. The Jesuits accused Montesquieu of excusing suicide by regarding it as a disease due to the climate of England and so on. And the Jansenists said Montesquieu is a follower of natural religion and he never forgets that England is the cradle of this sect.<sup>59</sup> Therefore he tries to *passer l’éponge*, “passes the sponge” on all crimes which he observes in England. Montesquieu of course denied that he was a follower of natural religion, that one can expect.

But then of course this question—after we have seen that the English have this strange desire to kill themselves—can this be reconciled with their great virtue which enables them to have this marvel of a constitution? This is discussed in the next chapter. Let us read<sup>60</sup> the second paragraph.

**Mr. Reinken:** “And if this nation has likewise derived from the climate a certain impatience of temper, which renders them incapable of bearing the same train of things for any long continuance, it is obvious that the government above mentioned is the fittest for them.”

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<sup>xiv</sup> In original: “He thinks that everything comes from the hand of God, and that man has nothing more to do than to submit.” *Spirit of Laws*, vol. I, bk. XIV, ch. 11, 230–31.

**LS:**<sup>61</sup> In other words the same spleen which makes them so liable to commit suicide also makes them desirous of change—“progressive,” as it would be called today. So that is connected. There is a note here, a footnote, when he speaks of tyranny. The third paragraph from the end. Read that.

**Mr. Reinken:** “This temper in a free nation is extremely proper for disconcerting the projects of tyranny.” The note: “Here I take this word for the design of subverting the established power, and especially that of democracy; this is the signification in which it was understood by the Greeks and Romans.”<sup>xv</sup>

**LS:** He almost suggests here that England is a democracy. But you see also how carefully he distinguishes between tyranny and despotism. In present-day usage, after Montesquieu, the two terms in popular usage have become identical. For Montesquieu this is still not the case.

**Student:** I was thinking of Sophocles’ play. Wasn’t it originally called—

**LS:** *Tyrannus* sure, but *tyrannus* originally means something, another word for king. That it is used in opposition to king, that is a later development.

**Student:** . . . .

**LS:** No,<sup>62</sup> when Socrates calls it *Oedipus Tyrannus* then he means it of course in the old sense<sup>63</sup>. If<sup>64</sup> [Sophocles used it also with a view to the bad meaning which the word “tyranny” had acquired in his time], that would need a proof<sup>65</sup>. [If] Oedipus was a tyrant<sup>66</sup> and not a king, that would have to be proved. But the simple interpretation is that he uses an old archaic expression for an archaic phenomenon like Oedipus.

**Student:** In other words, Montesquieu’s philology is not correct here.

**LS:** It is quite correct for the classical time.

**Student:** He’s going back to that earlier—

**LS:** Sure, that is earlier. *Zeus tyrannus* can be used in a perfectly impeccable manner. No, that needs some more reflection. Now let us see, chapter 14, the beginning.

**Mr. Reinken:** “Our ancestors, the ancient Germans—”

**LS:** “Our fathers,” which is a bit stronger, “*nos pères*.”

**Mr. Reinken:** “—the ancient Germans, lived in a climate where the passions were extremely calm. Their laws decided only in such cases where the injury was visible to the eye, and went no farther. And as they judged of the outrages done to men from the greatness of the wound, they acted with no other delicacy in respect to the injuries done

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 13, 231–32.

to women. The law of the Alemans on this subject is very extraordinary. If a person uncovers a woman's head, he pays a fine of fifty sous; if he uncovers her leg up to the knee, he pays the same; and double from the knee upwards. One would think that the law measured the insults offered to women as we measure a figure in geometry; it did not punish the crime of the imagination, but that of the eye."<sup>xvi</sup>

**LS:** That is only what we need here. In other words, it shows how cool and cold and unimaginative the Norman thinkers were.<sup>67</sup> Voltaire has written a critical commentary on this whole work to which I have no convenient access, but I find here in another edition a quotation which is quite interesting. Voltaire says, "One has perhaps attached too great an inference to climate. It seems that everywhere human society has been formed by small tribes which after having civilized themselves more or less finally united themselves into great empires or were absorbed by them. The most real difference is that which exists between the Europeans and the rest of the globe. And this difference is the work of the Greeks, i.e., not of our fathers. The philosophers of Athens, Milet, Syracuse, Alexandria have made the inhabitants of Europe, of present-day Europe, superior to the other men. If Xerxes had won at Salamis, we would perhaps still be barbarians."<sup>68xvii</sup> This was the older view, one can say, the rationalistic view which is now a bit threatened by Montesquieu by the strong emphasis on the climate. I thought I should mention that.<sup>69</sup> [In] Book XIV, this expression, "our fathers, the ancient Germans," occurred already in Book X, chapter 3, not in quite this sharp form, but almost.<sup>70</sup>

Now a word about Book XIV in general dealing with the effects of climate. The main point is to make clear the superiority of the north to the south, of the occident to the orient. The former is active. The latter is passive, or speculative. Christianity is of course of oriental origin and therefore there is an inherent difficulty in an occidental Christianity. This one can say is the underlying theme. Yes.

**Student:** Is there a connection between the English tendency for suicide and the Buddhist desire for—

**LS:** No, obviously not.

**Same Student:** But isn't there a sort of similarity?

**LS:** No, no, no. Montesquieu would say there is a superficial similarity, but the causes are entirely different, because the English climate does not make people lazy, and especially not the Scotch. Yes.

**Mr. Bruell:** In the last chapter of Book XIV,<sup>71</sup> chapter 15. First the Japanese are mentioned in a very bad way. In contrast to them the people of India are praised, whereas earlier they had been criticized, and the praise seems to be a tentative sort.

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<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. XIV, ch. 14, 232.

<sup>xvii</sup> Edition unknown.

**LS:** Yes,<sup>72</sup> climate can also have some good effects. There are certain respects in which softness is good. But it cannot be simply good. For instance they have established few punishments, they are not very severe, they are not even rigorously executed. And this Montesquieu would surely regard as a wrong thing.<sup>73</sup> Mere softness is not rational kindness [or] gentleness. So there is a variety of phenomena and there can be all kinds of similarities which, like that between England<sup>74</sup> and Buddhism, India.<sup>75</sup> Someone could go further, that's the reason why the English succeeded so well in conquering India because there is a connection between their inclination toward suicide and the inclination of these easterners toward nirvana. But this would go a bit far. [Laughter]

**Student:** In the same way, the Japanese are taken here apparently as a people from a cold climate.

**LS:** Ya, or at least not hot.

**Student:** And he's also showing the disadvantages of the cold climate in this chapter as well.

**LS:** Yes, harsher, surely. But why is Japan not blessed in the way in which England is blessed? Also an island, but why is Japan hopelessly despotic? That we can only find out later when we come to the books on population.

**Student:**<sup>76</sup> Japan in many ways has been identified with<sup>77</sup> sort of the harshness and the wrong things about the Bible. It's sort of an oriental country that happens to be cold in the same way that Christianity is an oriental, or southern phenomenon.

**LS:**<sup>78</sup> It also has to do with population, because he claims that far eastern nations [like China] and [Japan] are particularly fertile,<sup>79</sup> a problem which we know from another angle today. In other words, climate is not the only point.<sup>80</sup>

Now let us turn to Book XV which opens the books dealing with slavery. The opposite of slavery is freedom. We are therefore reminded of the fact that freedom, which became the theme in Books XI and XII and [which was] prepared in a way already in<sup>81</sup> Books IX and X, is still the theme, but now from a somewhat different point of view.<sup>82</sup> I will take up first the most important point for our general orientation. And that is in chapter 7. He discusses all kinds of reasons given in justification of slavery which he rejects. And one of them is given in chapter 7.

**Mr. Reinken:** "There is another origin of the right of slavery, and even of the most cruel slavery which is to be seen among men.

"There are countries where the excess of heat enervates the body, and renders men so slothful and dispirited that nothing but the fear of chastisement can oblige them to perform any laborious duty: slavery is there more reconcilable to reason—"

**LS:** As he puts it, "slavery shocks there reason less."



**Mr. Reinken:** “—shocks reason less; and the master being as lazy with respect to his sovereign as his slave—”

**LS:** “cowardly”

**Mr. Reinken:** “—cowardly with respect to his sovereign as his slave is with regard to him, this adds a political to a civil slavery.

“Aristotle endeavors to prove that there are natural slaves; but what he says is far from proving it. If there be any such, I believe they are those of whom I have been speaking.”

**LS:** In other words, [he’s referring to] the people who must be compelled to work because the climate makes them too lazy, and not Aristotle’s morons. Yes, go on.

**Mr. Reinken:** “But as all men are born equal, slavery must be accounted unnatural, though in some countries it be founded on natural reason<sup>83</sup>—”

**LS:** “On *a* natural reason.”

**Mr. Reinken:** <sup>84</sup>— And one must distinguish between such countries, and those in which the natural reasons themselves reject it, as in Europe where it has been so happily abolished.<sup>xviii</sup>

“Plutarch, in the ‘Life of Numa,’ says that in Saturn’s time there was neither slave nor master. Christianity has restored that age in our climates.”<sup>xix</sup>

**LS:** It is interesting that he says also in our climates. He does not say in our climates, in our religion, by any chance. We have seen this before.<sup>85</sup>

The next chapter is entitled “Uselessness of Slavery Among Us.” Now this we must properly understand. In this point Christianity has acted in accordance with the nature of the climate, and therefore it has acted wisely. But the question is whether it is this at all times. This passage reminds [us] of an earlier one in Book XII, chapter 3, where he says, “The Greeks and Romans demanded one voice more for condemning a man. Our French laws demand two. The Greeks pretended that their usage had been established by the gods, but in fact it is ours which has been established by the gods.” We discussed that at that time.<sup>86</sup>

This leads to a question which we must at least discuss for one moment.<sup>87</sup> Montesquieu simply takes for granted that the abolition of slavery is due to Christianity. What about the posture of classical philosophy? He mentions Aristotle here, and Aristotle as we all know comes out in favor of slavery, at least slavery of a certain kind. There are people

<sup>xviii</sup> In original: “and a wide difference ought to be made between such countries, and those in which even natural reason rejects it, as in Europe, where it has been so happily abolished.”

<sup>xix</sup> *Spirit of Laws*, vol. I, bk. XV, ch. 7, 240.

who know nothing of Aristotle but this fact, that Aristotle has said that slavery can be just. And they believe that this settles the issue of Aristotle. But apart from all subtleties of the argument of the First Book of the *Politics*, is this simply true?<sup>88</sup>

I read to you one passage from the *Ethics*, from the Eighth Book.<sup>89</sup> Well the context is very interesting. The context is friendship. And friendship is understood by Aristotle to be something higher than justice. So there is a certain kinship between justice, between friendship in the Aristotelian sense and charity or love in the Christian sense, transcends justice. "Now friendship cannot be toward a horse or an ox, nor toward a slave as slave for there is nothing in common; for the slave is a tool, an animate tool [a term he had used in the First Book of the *Politics*]. And the tool is an inanimate slave. Then qua slave there is no friendship toward him, but qua human being [there is], for there seems to be something just toward every man, for every man toward everyone who is capable to communicate in law and contract." And hence also of course friendship in so far as they are human beings.

So this community of the human race, of all men endowed with speech or reason, is of course very well known to Aristotle. That he or Plato did not draw all the conclusions from that is another matter. There were some Greeks like the sophist Antiphon who simply rejected slavery altogether, but on grounds so poor that it is better to have slavery than to abolish it on that ground. Namely, the reason is that all human beings breathe. Slaves breathe as well as others, and have digestion and so on. That is not a good, respectable ground<sup>90</sup> for abolishing slavery. There must be some higher principle than that.

But now what is the point? The legal abolition of slavery has surely taken place and started from Christian Europe and spread from there. There is no doubt about that. But does this prove that this is due to Christianity? Obviously not, because Christian Europe has quite a few ingredients of which Christianity is the most important but not the only one. Could it not be due to modern philosophy with its egalitarian teaching? But here the question returns. Is not, as has often been said, modern philosophy secularized Christianity? Now this would force one to raise this question: what is the decisive difference between modern philosophy as a whole, to the extent to which we can speak of that, and ancient philosophy? And then one can give this answer. What is peculiar to the moderns in contradistinction to the classics is the questioning of nature, as is indicated by terms like conquest of nature, and in particular by the view that man's nature is infinitely malleable.<sup>91</sup> [I]f it is infinitely malleable, there is no human nature to speak of.

Now to link this up to the biblical tradition, one would have to say the importance of freedom, not here in the sense of political freedom but of a more fundamental freedom, the freedom of God or man showing itself in the notion of redemption and the possibility of redemption. There is no possibility of natural obstacles to any man being redeemed. Whereas there are obviously natural obstacles to a man becoming a wise man, or a philosopher in the Platonic or Aristotelian sense. The classical view one can say is simply expressed by a statement of Tacitus which was then characteristically taken over by Spinoza. There will be vices as long as there will be human beings.

Somehow the biblical notion of redemption questions that. There may be a redeemed mankind, whether as the Second Coming or even now. Even now one cannot know whether someone is not touched by grace and becomes an entirely different man from one moment to the other. This is I think the key point. So, in other words, this questioning of the importance of nature, which takes place in the Old Testament of course without any knowledge of nature qua nature—nature is not an Old Testament term—but which in the language of the Greeks one would have to say is a questioning of nature. The freedom of God and the corresponding freedom of man deprive nature of the importance which it had for classical moral and political philosophy. This, I think, we should at least mention. Now let me see. Yes.

**Student:** Then in a sense Montesquieu was right about Christianity.

**LS:** Yes,<sup>92</sup> the fact as he states it here is unquestionable, but he doesn't go deeper into the issue.<sup>93</sup> Montesquieu<sup>94</sup> would trace the greater humanity of modern times on the whole to the influence of modern philosophy,<sup>95</sup> as we have seen our knowledge, *nos connaissances*—you remember the passage?—when he spoke of penal law I think. I do not remember.

Now let us turn to the beginning of<sup>96</sup> Book [XV]. He rejects slavery on the ground of moral virtue in the first place. It is very hard for a slave to be moral, and it is for the same reason very hard for the master to remain moral. Think only of female slaves. There you have the clearest example.<sup>97</sup> The conclusion is of course here that slavery is intolerable in any moderate government, monarchy or republic.

But this leads only to the question, how come<sup>98</sup> the ancients, which he seems to admire so greatly, tolerated slavery without any difficulty? By the way, this moral argument reminds us of his definition of freedom. You are<sup>99</sup> politically free if you are not compelled by the law to do what you ought not to do and you are not forbidden by the law to do what you ought to do.<sup>100</sup> The application to slavery is obvious. If slavery is instituted, you are compelled by the law to do what you ought not to do, for example to return a slave to his owner, say a female slave, a very attractive young girl to her abominable owner, which is very immoral, and so on. So this<sup>101</sup> plays an important part in the argument.

Now let us see. In chapter 2, where he criticizes the arguments in favor of slavery given by the Roman law. We cannot read it all. In the fourth paragraph. "If it is not permitted—"

**Mr. Reinken:** "If it is not lawful for a man to kill himself because he robs his country of his person, for the same reason he is not allowed to barter his freedom. The freedom of every citizen constitutes a part of the public liberty, and in a democratic state is even a part of the sovereignty. To sell one's freedom is so repugnant to all reason as can scarcely be supposed in any man. If liberty may be rated with respect to the buyer, it is beyond all price to the seller. The civil law, which authorizes a division of goods among men, cannot

be thought to rank among such goods a part of the men who were to make this division.”<sup>xx</sup>

**LS:** Let us stop here for one moment. This is a very impressive statement in favor of freedom as we have seen, but I would like to mention one point. Which law permits men to distribute the goods? Civil law.<sup>102</sup> What is behind it is this. By nature there is community of goods, an old doctrine, and the division of goods has been introduced by civil law. That is all right. But he says civil law *permits* men the division of goods. So that this division itself goes back to a previous permission not of natural law, as it would be according to the older doctrine, but of civil law. That is very remarkable. The right of property is in its very root *de jure civile*, of civil law origin, which one couldn't say of the traditional view and which confirms what we have seen on another occasion, that Montesquieu did not accept the natural character of property, not even in the way in which Locke had asserted it. Now let us turn to the third chapter, the last paragraph.

**Mr. Reinken:** “Knowledge humanizes mankind, and reason—”

**LS:** Well, “makes man *doux*, soft, gentle.”

**Mr. Reinken:** “—Knowledge softens mankind, and reason inclines to mildness—”

**LS:** “To humanity,” that's a key word for Montesquieu. We will come later on to a passage where he will make clear the relation between humanity and virtue. And this is a very crucial passage. Yes.

**Mr. Reinken:** “—Knowledge makes men soft, reasons brings to humanity; it is only the prejudices which make us renounce it.”<sup>xxi</sup>

**LS:** Yes,<sup>103</sup> these great progresses toward a decent posture toward slavery are ultimately due to reason and knowledge, but not religion. We must not forget that. Chapter 5 is very impressive, about slavery of Negroes—very sarcastic and very powerful. And those of you who have not read it, if there are such people around here—I hope there are none—they should read it as soon as they come home. It's a very powerful and impressive statement. We can read perhaps only the central paragraph of this chapter 5, the sixth paragraph.

**Mr. Reinken:** “It is so natural to look upon color as the criterion of human nature—”

**LS:** Well more strictly, “that it is color that constitutes the essence of mankind.”

**Mr. Reinken:** “—which constitutes the essence of mankind, that the Asiatics, among whom eunuchs are employed, always deprive the blacks of their resemblance to us by a more opprobrious distinction.”<sup>xxii</sup>

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<sup>xx</sup> *Spirit of Laws*, vol. I, bk. XV, ch. 2, 236.

<sup>xxi</sup> In original: “Knowledge humanizes mankind, and reason inclines to mildness but prejudices eradicate every tender disposition.” *Spirit of Laws*, vol. I, bk. XV, ch. 3, 238.

**LS:** The central point is that what<sup>104</sup> is underlying the nastiness here is a belief that color, white color namely, is the essence of man as man.<sup>105</sup> [If so], it would be defensible to treat people of different color as one treats brutes, because then they would not be human beings. This doesn't settle the whole issue but it is surely an important consideration.<sup>106</sup> The beginning of chapter 8, we have discussed chapter 7.

**Mr. Reinken:** "Natural slavery, then, is to be limited to certain countries of the world.<sup>xxiii</sup> In all other countries, even the most servile drudgeries may be performed by freemen."

**LS:**<sup>107</sup> Then he tries to show also in the sequel, in the third paragraph of this chapter, that not only reason but also what we would call technological progress is required for making natural right effective. For example the mines of the Turks in the Bannat of Temeswaer, though richer than those of Hungary<sup>108</sup>—[their success] was due to machines. He mentions that. Let us read the last paragraph of this chapter.

**Mr. Reinken:** "I know not whether this article be dictated by my understanding or by my heart. Possibly there is not that climate upon earth where the most laborious services might not with proper encouragement be performed by freemen. Bad laws having made lazy men, they have been reduced to slavery because of their laziness."<sup>xxiv</sup>

**LS:** Here this point is remarkable. You see his doubt. And this is a point which you did not bring out sufficiently in your paper, Mr. Meriwether. He doesn't know whether it's his mind or his heart that says this, i.e., whether it is his humanity or whether it is really possible. That he leaves here open. This doubt remains.<sup>109</sup>

He could have said perhaps it is so. He does say "perhaps," as a matter of fact. There is perhaps no climate where one needs slavery absolutely.<sup>110</sup> One could on this basis say that the laziness of these people who are compelled to work by slavery is itself the consequence not of the climate so much as of bad laws. This is, however,<sup>111</sup> stated with some qualification. He says in a letter, "It is better to have people pay for the day, day laborers, than slaves. Whatever one may say of the pyramids and the immense works which one has erected, we have made greater ones, bigger ones, without slaves."<sup>xxv</sup> Does this phrase remind you of something we have read elsewhere, [that] the pyramids were built by slaves?<sup>112</sup>

I mean the gigantic works done by modern man far surpassing the pyramids or anything else.<sup>113</sup> The *Communist Manifesto* speaks of that. I haven't looked at it for a long time.

There is by the way a clear contradiction between the end of chapter 8 and Book XIV, chapter 6. You might very well look at this later yourself. In other words, Montesquieu does not definitely say that. You see the qualifications, the twofold qualification. Now let

<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. XV, ch. 5, 238.

<sup>xxiii</sup> In original: "Natural slavery, then, is to be limited to some particular parts of the world."

<sup>xxiv</sup> *Spirit of Laws*, vol. I, bk. XV, ch. 8, 240–41.

<sup>xxv</sup> Source unknown.

us see. In chapter<sup>114</sup> 9, there is an unqualified criticism of the Spartans surpassing everything else we have seen before. In chapter 11,<sup>115</sup> when he speaks of the abuses of slavery, let us read the first paragraph of chapter 11.

**Mr. Reinken:** “In Mahommedan states, not only the life and goods of female slaves, but also what is called their virtue or honor, are at their master’s disposal. One of the misfortunes of those countries is that the greatest part of the nation are born—”

**LS:** Actually I didn’t say, but also “what one calls their virtue or their honor.”

**Mr. Reinken:** <sup>116</sup>“—only to be subservient to the pleasures of the other. This servitude is alleviated by the laziness in which such slaves spend their days; which is an additional disadvantage to the state.”

**LS:** Skip the next paragraph.

**Mr. Reinken:** “Reason requires that the master’s power should not extend to what does not appertain to his service: slavery should be calculated for utility, and not for pleasure. The laws of chastity arise from those of nature—”

**LS:** No, “are from natural right,” “*de jure naturale*.”

**Mr. Reinken:** “—are of natural right, and ought in all nations to be respected.”<sup>xxvi</sup>

**LS:** “Felt,” “and ought to be felt by all nations of the earth.” There is a certain difficulty here. They are of natural right origin, but if they are strictly speaking natural they would have to be felt just as the desire for<sup>117</sup> [self-preservation]. People actually desire preservation, but here he says they *ought* to be felt.<sup>118</sup> That the laws of *pudeur*, [of] modesty, as he calls it, are not simply of natural right could be shown by a section we have discussed earlier, Book XII, chapter 14, last paragraph. In the sequel he gives a very powerful argument against slavery from the point of view of moral virtue.<sup>119</sup>

Chapter [16],<sup>120</sup> the fifth paragraph, contains the first explicit criticism of the Mosaic law, but I must confess I do not understand it. Did any one of you understand it? Now let us read it and see.

**Mr. Reinken:**<sup>121</sup> “The law of Moses was extremely severe. ‘If a man struck his servant so that he died under his hand, he was to be punished; but, if he survived a day or two, no punishment ensued, because he was his money.’”

**LS:** I.e., his property. Now go on.

**Mr. Reinken:** “Strange that a civil institution should thus relax the law of nature!”<sup>xxvii</sup>

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<sup>xxvi</sup> *Spirit of Laws*, vol. I, bk. XV, ch. 11, 242.

<sup>xxvii</sup> *Spirit of Laws*, vol. I, bk. XV, ch. 16, 246.

**LS:** Yes, what does this mean? [For] what kind of people<sup>122</sup> [was it] necessary that the civil law should be milder than the natural law? Would this mean that the natural law is harsher in all cases or in most cases than the civil law?<sup>123</sup> That is a harsh law without any question. But what does he mean by that? He cannot single out Moses because he was not very strict if someone hurt a slave very badly and he died the next day, because he says a little bit later, “the laws of Plato and of most people take away from slaves their natural defense.” So they have no right to defend themselves.

[Class abruptly ended by a teacher who demands the room]

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<sup>1</sup> Deleted “on.”

<sup>2</sup> Deleted “and so forth.”

<sup>3</sup> Deleted “Now.”

<sup>4</sup> Deleted “I mean.”

<sup>5</sup> Deleted “for that.”

<sup>6</sup> Deleted “of course.”

<sup>7</sup> Deleted “Now first I want to return a paper to Mr. [ ]. This paper was very satisfactory. And you took proper account of the fact that the perspective of Machiavelli changes while he proceeds. Well there are a few points which I underlined because I found them correct, not for the reason that I differed. Good.”

<sup>8</sup> Deleted “Now.”

<sup>9</sup> Deleted “of course.”

<sup>10</sup> Deleted “Well.”

<sup>11</sup> Deleted “Now.”

<sup>12</sup> Deleted “of course.”

<sup>13</sup> Deleted “of course.”

<sup>14</sup> Deleted “Now.”

<sup>15</sup> Deleted “So, in other words.”

<sup>16</sup> Deleted “for.”

<sup>17</sup> Deleted “Now.”

<sup>18</sup> Deleted “Good. Now.”

<sup>19</sup> Deleted “in.”

<sup>20</sup> Deleted “Now you see.”

<sup>21</sup> Deleted “How does he know that?”

<sup>22</sup> Deleted “no, no.”

<sup>23</sup> Deleted “Now.”

<sup>24</sup> Deleted “Now.”

<sup>25</sup> Deleted “We cannot read that now. But I advise you to read it because.”

<sup>26</sup> Deleted “Now.”

<sup>27</sup> Deleted “kind.”

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<sup>28</sup> Deleted "I believe."

<sup>29</sup> Deleted "But."

<sup>30</sup> Deleted "of course."

<sup>31</sup> Deleted "I mean."

<sup>32</sup> Deleted "and."

<sup>33</sup> Deleted "and the."

<sup>34</sup> Deleted "No, no."

<sup>35</sup> Deleted "You see here."

<sup>36</sup> Deleted " 'it had its rise—.' "

LS: Monks sounds very, very [inaudible]."

<sup>37</sup> Deleted "You see."

<sup>38</sup> Deleted "Well."

<sup>39</sup> Deleted "of course."

<sup>40</sup> Moved "in."

<sup>41</sup> Deleted "Mary."

<sup>42</sup> The word could also be "simple."

<sup>43</sup> Deleted "Well you know that, so state it to the class."

Student: [inaudible]."

<sup>44</sup> Deleted "And."

<sup>45</sup> Deleted "In other words."

<sup>46</sup> Deleted "Now."

<sup>47</sup> Deleted "And."

<sup>48</sup> Deleted "And."

<sup>49</sup> Deleted "you must."

<sup>50</sup> Deleted "Now the—."

<sup>51</sup> Deleted "There is."

<sup>52</sup> Deleted "that."

<sup>53</sup> Deleted "Well."

<sup>54</sup> Deleted "And therefore."

<sup>55</sup> Deleted "Now we can read all this."

<sup>56</sup> Deleted "Yes."

<sup>57</sup> Deleted "of course."

<sup>58</sup> Deleted "So, in other words."

<sup>59</sup> Deleted "And."

<sup>60</sup> Deleted "only part of it."

<sup>61</sup> Deleted "You see."



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<sup>62</sup> Deleted “no, no.”

<sup>63</sup> Deleted “in which it doesn’t....”

<sup>64</sup> Deleted “it should have.”

<sup>65</sup> Moved Sophocles used it also with a view to the bad meaning which the word “tyranny” had acquired in his time. In other words, that”

<sup>66</sup> Changed from “In other words, that Oedipus was a tyrant.”

<sup>67</sup> Deleted “Now.”

<sup>68</sup> Deleted “Now.”

<sup>69</sup> Deleted “Now.”

<sup>70</sup> Deleted “A.”

<sup>71</sup> Deleted “Student: Yes.”

<sup>72</sup> Deleted “in other words.”

<sup>73</sup> Deleted “You know, the.”

<sup>74</sup> Deleted “and what was that other country somebody mentioned?”

<sup>75</sup> Deleted “And.”

<sup>76</sup> Deleted “Well.”

<sup>77</sup> Deleted “the.”

<sup>78</sup> Deleted “Well.”

<sup>79</sup> Changed from “because he claims that Eastern nations, far Eastern nations, Chinese and Japanese, are particularly fertile.”

<sup>80</sup> Deleted “Good.”

<sup>81</sup> Deleted “chapters.”

<sup>82</sup> Deleted “Now.”

<sup>83</sup> Changed from ““it may be founded on a natural reason.””

<sup>84</sup> Deleted “Yes—‘on a natural reason.’”

<sup>85</sup> Deleted “And.”

<sup>86</sup> Deleted “Now this passage reminds of that. Now.”

<sup>87</sup> Deleted “What is the basis....”

<sup>88</sup> Deleted “Now.”

<sup>89</sup> Deleted “Now here he says....”

<sup>90</sup> Deleted “I think.”

<sup>91</sup> Deleted “Now.”

<sup>92</sup> Deleted “but.”

<sup>93</sup> Deleted “No.”

<sup>94</sup> Deleted “would I think.”

<sup>95</sup> Deleted “as when he spoke of penal law in Book.”

<sup>96</sup> Deleted “the.”

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<sup>97</sup> Deleted “Now.”

<sup>98</sup> Deleted “that.”

<sup>99</sup> Deleted “free.”

<sup>100</sup> Deleted “Now.”

<sup>101</sup> Deleted “I think.”

<sup>102</sup> Deleted “Now.”

<sup>103</sup> Deleted “so in other words.”

<sup>104</sup> Changed from “This is I think the central point that.”

<sup>105</sup> Deleted “Then, of course.”

<sup>106</sup> Deleted “Now let us see.”

<sup>107</sup> Deleted “Good. And.”

<sup>108</sup> Deleted “and that.”

<sup>109</sup> Deleted “But perhaps....”

<sup>110</sup> Deleted “And.”

<sup>111</sup> Deleted “you see.”

<sup>112</sup> Deleted “Student: With reference to our philosophy, our reasoning?”

LS: No, no. Elsewhere, outside of Montesquieu.

Student: A monument to the insufficiency of human enjoyment?

LS: No, no.”

<sup>113</sup> Deleted “In the *Communist Manifesto*.”

<sup>114</sup> Deleted “10 we find an unqualified criticism of Sparta ...

Student: Subtract one to get the Nugent numbering.

LS: Oh I see. Thank you. Chapter.”

<sup>115</sup> Deleted “according to your counting.”

<sup>116</sup> Deleted “What is called their virtue or honor. ‘One of the misfortunes of those countries is that the greatest part of the nation are born.’”

<sup>117</sup> Deleted “preservation.”

<sup>118</sup> Deleted “Now.”

<sup>119</sup> Deleted “Unfortunately we cannot read that.”

<sup>120</sup> Changed from “In Chapter 17.”

<sup>121</sup> Deleted “ ‘There are several ways of—”

LS: No, no. We cannot read that. ‘The law of Moses—.’

Student: Oh I see, chapter 16 by our count.”

<sup>122</sup> Deleted “where it was.”

<sup>123</sup> Deleted “And why does this prove....”

**Session 14: Feb. 17, 1966**

[In progress] <sup>1</sup>**Mr. Reinken:** “But it is difficult for me to believe that there are many countries where the disproportion can be great enough for any exigency to justify the introducing either the law in favor of many wives or that in favor of many husbands. This would only imply that a majority of women or even a majority of men is more conformable to nature in certain countries than in others.”

**Leo Strauss:** Now this again is a masterpiece of his weasel expressions. In other words, let us assume that it is so that in one country there should be twice as many girls, or three times as many girls as boys, or vice versa. Now this creates a great problem. What shall be done with that surplus? Shall we condemn these girls to become spinsters, or the opposite? Or is it not more humane to permit polygamy or polyandry, whatever the case may be? Now this is<sup>2</sup> suggested by Montesquieu. But notice what he says here: “I do not believe that there are many countries where the disproportion is sufficiently great [so as] to demand that there should be introduced there the law of many women.” In other words, there are some countries in which it is demanded by human reason that that one should introduce polygamy.<sup>3</sup> You remember the phrase, the central distinction we saw in Book XV, chapter 8, at the end—“I do not know whether it is the mind or the heart which dictates to me this article against slavery.” And of course belief is a matter of the heart rather than of the mind. That’s the same point. This I thought is quite curious. And the last paragraph of this chapter.

**Mr. Reinken:** “In all this I only give their reasons, but do not justify their customs.”<sup>i</sup>

**LS:** You remember that we read already in the Introduction or Preface: on the one hand he says he wants to make everyone happy with the laws under which he is born. And that is very nice. All Frenchmen should be satisfied with French laws, and all Germans with German laws, but then of course also all Chinese with their laws, and all Mohammedans with their laws. That universal tolerance is a very difficult thing to maintain.

And it is one of our problems today. As you know, you cannot approve of all laws and customs everywhere. This kind of pluralism and toleration goes too far. Then you would have to swallow cannibalism and other institutions too. And here he says the opposite. He says I only explain them, the natural reasons which give rise to them. I do not justify them.<sup>4</sup> But in a way here precisely I think he justifies them and uses this reasoning to conceal what he is about. Someone raised his hand while I spoke.

**Student:** I would ask you just one point. What is the difference? He had to explain them . . . to justify them.

**LS:** It all depends.<sup>5</sup> If he shows that the reasons for something are necessary reasons, then nothing can be done about those.

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 4, 253.

**Same Student:** He does. He says it's the climate.

**LS:** Yes,<sup>6</sup> let us get this straight. If he would say in a given case, a given explanation, say this particular error of this particular legislator—they believed in ghosts sitting on mountaintops—explains why he forbade the building of railways through the countryside, then of course he explains it and shows at the same time how to change it. Liberate yourself from the prejudices of this old legislator.

**Same Student:** He seems to have a social relativism, or an institutional relativism, but not a moral relativism to go with it.

**LS:**<sup>7</sup> The word “relativism” has so many meanings. It is the most relative word in the world. Let us only look at the typical cases of explanation. If he explains an institution by an error of the legislator, then he shows of course the way toward change. That's clear. But if he traces an institution to natural necessity, then he says no change is possible.

**Student:** But in that case isn't there an interplay between the laws of nature which he spoke of originally and the natural causes for various phenomena, for instance in the countries of Asia. Some things like polygamy he seems to sanction and to explain its existence by resort to the climate. But other things like the natural indolence of certain countries have to be combated by the legislator. And that would be keeping in mind the natural—

**LS:** All right. We would have to make a distinction. There are natural effects which can be combated, bad effects which can be combated, and natural, bad effects which cannot be combated.

**Student:** And he shows that the cure is worse than the disease.

**Student:** One other point—I don't want to get ahead of the story—but in chapter 12 he talks in my translation about physical power.

**LS:** Let us wait until we come to that.

**Same Student:** Yes, but it seems to me that that's the heart of this distinction.

**LS:** Yes, let us wait until we come to that. It depends so much on the translation and this kind of thing. Now let us turn to chapter 6. Let us read the first paragraph.

**Mr. Reinken:** “With regard to polygamy in general, independently of the circumstances which may render it tolerable—”

**LS:** “A bit tolerable, which may induce one to tolerate it a bit.”<sup>8</sup> The immediate question is, can you judge of anything independently of the circumstances?

**Mr. Reinken:** “—it is not of the least service to mankind, nor to either of the two sexes, whether it be that which abuses or that which is abused. Neither is it of service to the children; for one of its greatest inconveniences is, that the father and mother cannot have the same affection for their offspring; a father cannot love twenty children with the same tenderness as a mother can love two. It is much worse when a wife has many husbands; for then paternal love only is held by this opinion, that a father may believe, if he will, or that others may believe, that certain children belong to him.”<sup>ii</sup>

**LS:**<sup>9</sup> This is an old story, that the mother knows with greater certainty that it’s her child than that the father knows that it is his. But that is not the main point. The question is, what should happen to those who are compelled to remain unmarried. It is clear that monogamy is more humane than polygamy. That is easy to grant. But this grave case of a great disproportion of the two sexes—he might have said that perhaps the mortality of women was much higher in former times owing to childbirth. It was fairly common in my childhood even to see a man who had a second wife than the opposite case, and not only because generally speaking widows did not so easily remarry as widowers, not only that, but I think it has something to do with the greater mortality of women. That has apparently greatly changed in our age; statistics would probably bear that out. Now let us turn to chapter 8, which has to do with the general problem again.

**Mr. Reinken:** “‘Of the Separation of Women from Men.’

“The prodigious number of wives possessed by those who live in rich and voluptuous countries is a consequence of the law of polygamy. Their separation from men, and their close confinement, naturally follow from the greatness of this number. Domestic order renders this necessary; thus an insolvent debtor seeks to conceal himself from the pursuit of his creditors. There are climates where the impulses of nature have such force that morality has almost none. If a man be left with a woman, the temptation and the fall will be the same thing; the attack certain, the resistance none. In these countries, instead of precepts, they have recourse to bolts and bars.”

**LS:** Yes, it is more succinct in the French: “In these countries, instead of precepts one needs bars.”<sup>10</sup>

**Mr. Reinken:** “One of the Chinese classic authors considers the man as a prodigy of virtue who, finding a woman alone in a distant apartment, can forbear making use of force.”

**LS:** Yes, now the great beauty in the footnotes.

**Mr. Reinken:** “It is an admirable touch-stone, to find by oneself a treasure, and to know the right owner; or to see a beautiful woman in a lonely apartment; or to hear the cries of an enemy, who must perish without our assistance.”<sup>iii</sup>

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<sup>ii</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 6, 254.

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 8, 255.

**LS:**<sup>11</sup> The Chinese classic says a beautiful woman, and Montesquieu makes simply a woman because given the climate not even the attractiveness of the woman is necessary. Now here virtue is powerless. He says politely almost powerless, but that is exactly what Machiavelli would call the necessity to sin.<sup>12</sup> Chapter 9, the heading.

**Mr. Reinken:** “Of the Connection between domestic and political Government.”

**LS:** Let us read the two last paragraphs of this chapter.

**Mr. Reinken:** “In a government which requires, above all things, that a particular regard be paid to its tranquility, and where the extreme subordination calls for peace, it is absolutely necessary to shut up the women; for their intrigues would prove fatal to their husbands. A government which has not time to examine into the conduct of its subjects views them with a suspicious eye, only because they appear and suffer themselves to be known.”

**LS:** In other words, where suspicion alone suffices, and the suspicions will naturally arise by virtue of what the women do, this would be fair. Yes.

**Mr. Reinken:** “Let us suppose that the levity of mind, the indiscretions, the tastes and caprices of our women, attended by their passions of a higher and a lower kind, with all their active fire, and in that full liberty with which they appear amongst us, were conveyed into an eastern government, where would be the father of a family who could enjoy a moment’s repose? The men would be everywhere suspected, everywhere enemies; the state would be overturned, and the kingdom overflowed with rivers of blood.”<sup>iv</sup>

**LS:** So one sees that this is the same man who wrote the *Persian Letters* obviously. Now the next chapter deals explicitly with the morals, the principle of moral in the orient. Let us read the second paragraph.

**Mr. Reinken:** “This is more particularly done by confinement. The women should not only be separated from the men by the walls of the house, but they ought also to be separated in the same enclosure, in such a manner that each may have a distinct household in the same family.”

**LS:** No,<sup>13</sup> that they form, the women form as it were a particularly family within the family. That’s a harem.

**Mr. Reinken:**<sup>14</sup> “Hence, each derives all that relates to the practice of morality, modesty, chastity, reserve, silence, peace, dependence, respect, and love; and, in short, a general direction of her thoughts to that which, in its own nature, is a thing of the greatest importance.”

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<sup>iv</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 9, 256.

**LS:** No, “which according to its nature is the best thing in the world,” namely the unique attachment to its family. So the whole practice of morality derives from the institution of the harem, given the conditions prevailing in the orient. The harem is according to nature, would be the old fashioned expression for that, and that is what he surely conveys here. In the third paragraph.

**Mr. Reinken:**<sup>15</sup> “We find manners more pure in the several parts of the East, in proportion as the confinement of women is more strictly observed.”

**LS:** That only concerns what I said before. If you want to have morality of women in these conditions, you can have it only by virtue of the harem. And at the end of this same paragraph.

**Mr. Reinken:** “For this reason the empires of Turkey, Persia, of the Mogul, China, and Japan, the manners of their wives are admirable.

“But the same is not the case in India, where a multitude of islands and the situation of the land have divided the country into an infinite number of petty states, which from causes that we have not here room to mention are rendered despotic.”<sup>v</sup>

“There are none there but wretches, some pillaging and others pillaged. Their grandees have very moderate fortunes, and those whom they call rich have only a bare subsistence. The confinement of their women cannot, therefore, be very strict; nor can they make use of any great precautions to keep them within due bounds; hence it proceeds that the corruption of their manners is scarcely to be conceived.

“We may there see to what an extreme the vices of a climate indulged in full liberty will carry licentiousness. It is there that nature has a force, and modesty a weakness, which exceed all comprehension.”<sup>vi</sup>

**LS:** We can stop here. Of course it is by no means certain that the facts which Montesquieu gives as facts are true. He had to rely on travelers’ reports, and so forth. The harem is<sup>16</sup> an institution according to nature, namely because it corrects the vices which nature would bring about. And in the next chapter, the first paragraph, he says almost explicitly that in Asia monogamy would be absurd. Let us read that paragraph.

**Mr. Reinken:** “It is not only a plurality of wives which in certain places of the East requires their confinement, but also the climate itself. Those who consider the horrible crimes, the treachery, the dark villainies, the poisonings, the assassinations, which the liberty of women has occasioned at Goa and in the Portuguese settlements in the Indies, where religion permits only one wife; and who compare them with the innocence—”

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<sup>v</sup> “Hence it proceeds that in the empires of Turkey, Persia, of the Mogul, China, and Japan, the manners of their wives are admirable. But the case is not the same in India, where a multitude of islands and the situation of the land have divided the country into an infinite number of petty states, which from causes that we have not here room to mention are rendered despotic.”

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 10, 257.

**LS:** These were of course Christian colonies.

**Mr. Reinken:** “—with the innocence and purity of manners of the women of Turkey, Persia, Hindostan, China, and Japan, will clearly see that it is frequently as necessary to separate them from the men, when they have but one, as when they have many.

“These are things which ought to be decided by the climate. What purpose would it answer to shut up women in our northern countries, where their manners are naturally good—”

**LS:** That is not quite ironic here, meaning by nature good there because they don’t have the effects of the hot climate. Yes.

**Mr. Reinken:** “—by nature good where all their passions are calm; and where love rules over the heart with so regular and gentle an empire that the least degree prudence is sufficient to conduct it?”<sup>vii</sup>

**LS:** And now we come to that chapter to which Mr. A. has drawn our attention, chapter 12, and that is a crucial chapter because the whole question of natural right comes up here, a natural sense of shame. How does he translate it, “natural modesty?”

**Mr. Reinken:** Yes. “All nations are equally agreed in fixing contempt and ignominy on the incontinence of women. Nature has dictated this to all.”

**LS:** Now be careful. How does he prove it, that there is something natural about it? Because all nations agree. Present-day anthropologists would give us probably “n” examples of nations which disagree. We would have to look at the evidence. But this is the traditional way. The consent of the nations can never be due to agreement among the nations, but must be due to the voice of nature. Otherwise, why would the same nations who do not know each other produce the same institutions? But the voice of nature speaks clearly in favor of the continence of *women*. That’s important. Now go on.

**Mr. Reinken:** “Nature has dictated this to all. She has established the attack, and she has established too the resistance; and having implanted desires in both, she has given to the one boldness, and to the other shame. To individuals she has granted a long succession of years to attend to their preservation: but to continue the species, she has granted only a moment.”

**LS:**<sup>17</sup> So, in other words, [why has] nature<sup>18</sup> dictated this, if we use this metaphorical expression? The different function of the two sexes in procreation, the much greater direct importance of the woman than of the man, and I believe he refers to that in this dark last sentence. Self-preservation is, as it were, a problem which every human being has to solve at every time, at least by eating and drinking. But procreation is limited to certain moments. But<sup>19</sup> of course [the] moments are different in the case of the two sexes.

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<sup>vii</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 11, 258.



The man doesn't have to carry the child for nine months, as the woman has, and this explains why the burdens are much greater for the woman and therefore the woman defends and the man attacks, as he puts it here. On the moral level the sense of shame and reserve is greater on the part of the woman than on the part of the man. Yes, now let us go on.

**Mr. Reinken:** "It is then far from being true that to be incontinent is to follow the laws of nature; on the contrary, it is a violation of these laws, which can be observed only by behaving with modesty and discretion."

**LS:** But he has<sup>20</sup> proven [that] only for the women, not for the men, but he omits this qualification. Yes.

**Mr. Reinken:** "Besides, it is natural for intelligent beings to feel their imperfections. Nature has, therefore, fixed shame in our minds—a shame of our imperfections."

**LS:** Now he speaks of both sexes, because he speaks<sup>21</sup> [here] of intelligent beings in general. Intelligent beings are capable of feeling their imperfection and therefore of being ashamed for them. But this does not yet mean that what would be an imperfection for women would be an imperfection for men. That would still have to be established, but Montesquieu disregards this difference. Now we come to the paragraph which Mr. A had in mind<sup>22</sup>.

**Mr. Reinken:** "When, therefore, the physical power of certain climates violates the natural law of the two sexes, and that of intelligent beings, it belongs to the legislator to make civil laws, with a view to opposing the nature of the climate and re-establishing the primitive laws."<sup>viii</sup>

**LS:** Yes, the primitive laws are what laws here?

**Student:** The laws according to human nature, of man as man.

**LS:** Now according to his terminology.

**Student:** Modesty?

**LS:** No, he had used before the term "the natural law." The primitive laws would be the natural laws. Primitive means of course here the primary, not the undeveloped. So the physical power of certain climates may violate the natural law, or the moral law—that's the same thing. And in this case it is the duty of the legislator to come to the assistance, not of the climate of course, but of the natural law, and to counteract it by his civil laws, civil laws which restore the natural law.

Now we have an example of that, namely we have seen that women can be of exemplary chastity in Turkey, China, and Japan. We have read that. The harem would be a way in

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<sup>viii</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 12, 259.

which a civil institution<sup>23</sup> [and] civil law restore the natural law. There is no difficulty there. There is<sup>24</sup> a theoretical difficulty which you had in mind and<sup>25</sup> please state it.

**Student:** What I was thinking of, why the harem, why not monogamy?

**LS:** Does he say here anything of monogamy? He speaks only of unchastity and impropriety. But of that the legislator provides in polygamous countries by establishing the harem.

**Same Student:** But my point was this: if you have a certain situation brought about by the climate, and if that is contrary to the moral law, why choose the harem over monogamy to correct it?

**Mr. Reinken:** By harem we mean *purdah*, keeping them locked up.

**Same Student:** But why the many rather than one?

**LS:** Because the one is not feasible.

**Same Student:** Not feasible under any circumstances?

**LS:** Yes.

**Mr. Bruell:** And it even doesn't work without that one being locked up, as is shown in the Portuguese colonies.

**LS:** Yes but there because they want to establish monogamy. And therefore you have so many unmarried and then you are in trouble. But if they would be married, as they would be in a polygamous country, then . . . . The theoretical difficulty is this: How can the physical power of certain climates violate the natural laws? How is this possible? Because if the natural law is of course a moral law, a law established by God, and the laws of the climates are also established by God. This is probably the difficulty which you raised.

**Student:** That's the original difficulty.

**LS:** One would have to go into the question of what Montesquieu's ultimate view of the divine origin of both the moral law and the natural law is.

**Mr. Reinken:** Then the step in the syllogism I missed was that you can't put women into solitary confinement, and therefore, if *purdah*, then polygamy.

**LS:** Well that I don't know.

**Mr. Reinken:**<sup>26</sup> It was just a question of whether the harem is identical with polygamy.

**LS:** Surely not identical, but required by it.

**Mr. Reinken:** But does harem require polygamy—no, polygamy requires harem, more hot country requires confining the women? Now the question comes, can you still keep to good Christian monogamy and confine the women? In other words, what I missed was, is solitary confinement—

**LS:** No, that will be impossible, because there will be this excess of women over men, with many spinsters, and here will be also, at its greatest proportion, that they are no longer attractive, according to Montesquieu. He simply argues on the basis of the data as he states them without looking into whether it is true. So if this is so, that they become repulsive to be quite clear at a very early age, and misery all around, something must be done. Yes.

**Mr. Bruell:** What is the case of that theoretical difficulty if the natural laws which the physical climate violates are identified with those natural laws which he spoke about in Book I, chapter 2?

**LS:** No,<sup>27</sup> he doesn't do that. He doesn't call them Newtonian laws here, the natural law, or something like the natural.

**Mr. Bruell:** No, I meant the natural laws which apply only to man refers to self-preservation.<sup>28</sup> Is it possible that the physical force of the climate could violate those?

**LS:** Surely. We have discussed the case brought up by Montesquieu when William Petty figured out the worth of a human being.

**Mr. Bruell:** So that passage would draw into question—

**LS:** Sure, or at least the qualification. In other words, what is the practical value of the protection of human life by law or custom if in a condition of habitual famine or<sup>29</sup> in times of epidemics? Read the description of the plague in Lucretius to see what is likely to happen there. That would be the point.<sup>30</sup>

Now there is a connection between chapter 12 and the next chapter. We have only to read the last paragraph. The next chapter deals with jealousy.

**Mr. Reinken:** "It is generally the effect of the physical power of the climate; and, at the same time, the remedy of this physical power."<sup>ix</sup>

**LS:** In other words, a certain kind of jealousy: the jealousy which is founded not in the individual's passion but in the customs or morals of a country, that a man is *supposed* to be jealous of his wife. This is the effect of the physical force of the climate, and the remedy of that force. Now you can say the same thing of the harem. It is an effect of the physical force of the climate, and it is at the same time the remedy for it. Yes?

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 13, 259.

**Mr. Bruell:** Since he raises the question of religion here, does this chapter in any way raise the question of religion more generally and the way it's been raised in this whole book. I mean jealousy would probably have something to do with the orient, and he mentions Mohammed.

**LS:**<sup>31</sup> Can you be a bit more explicit?

**Mr. Bruell:**<sup>32</sup> I was thinking jealousy raised to an attribute of that.

**LS:** That is too slender a basis, but<sup>33</sup> Montesquieu knew that, because there was one French writer two generations before him, Pierre Bayle,<sup>x</sup> whom he calls a great man and discusses later on in the book, who had spoken of jealousy, of God's jealousy very emphatically in his book on the comet. There had been a comet in 1684 or so and the big concern<sup>34</sup>—superstitious fears were still very powerful—that God forbid this might announce the death of a prince. And Bayle [said], why should this be a misfortune because maybe the death of the prince would be a great measure.

At any rate in this connection Bayle opens up all kinds of things, and especially this most interesting question: What is worse, superstition or atheism? Bayle says atheism is better than superstition. And among the "n" arguments which he gives this one is outstanding, a theoretical argument. Let me see if I can reconstruct it. Yes, arguing from human analogy, which is perfectly in itself theologically all right, of course, taking human jealousy as an example . . .<sup>35</sup> The atheist does not worship another God, and the polytheist worships other gods. Now the jealous husband is of course jealous if his wife has relations with other men. Now what would be the parallel to the atheist?

**Student:** She simply locks herself up and won't come out.

**LS:** Yes, in a way she denies the existence of men. I'm sorry I can not reconstruct it, but great use is made of God's jealousy in this argument. Incidentally, this discussion in Bayle, an argument proving the possibility of an atheist society, is I believe the first thing of this kind ever. That has never happened before. I mean there may have been people who thought that [this] was possible, but we have no record of such a man. Bayle develops it at some length. It played a great role in the history of the modern West.<sup>36</sup> It is a very funny story, the way in which Bayle argues that out, but my memory isn't good enough.<sup>37</sup>

Now we can say that in the next chapters Montesquieu deals with the question of whether and to what extent marriage is natural, especially monogamy. And here he takes up the question of divorce and repudiation. Let us read only the second paragraph of chapter 15.

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<sup>x</sup> Pierre Bayle (1647–1706) French philosopher. The book to which Strauss refers is *Pensées diverses écrites à un docteur de Sorbonne à l'occasion de la Comète qui parut au mois de décembre 1680*, published 1682, revised with major additions 1683. Please see our more extensive footnote on page 73 of the Spring Quarter 1966 Montesquieu seminar, when Strauss again discusses Bayle and returns to the argument on jealousy.

**Mr. Reinken:** “The necessity there is sometimes for women to repudiate, and the difficulty there always is in doing it, render that law very tyrannical which gives this right to men without giving it to women.”

**LS:** Now let us read the next paragraph.

**Mr. Reinken:** “It is then a general rule that in all countries where the laws have given to men the power of repudiating, they ought also to grant it to women. Nay, in climates where women live in domestic slavery, one would think that the law ought to favor women with the right of repudiation, and husbands only with that of divorce.”<sup>xi</sup>

**LS:** I do not know whether we have seen before such a clear statement where Montesquieu *prescribes* to the law-giver what he should do. The law ought to accord that to women. Now this is clear: That cannot be positive law. That is natural,<sup>38</sup> natural law,<sup>39</sup> the law of reason. What reason prescribes is that given these and these circumstances, one has to do this and this.

Now Montesquieu has<sup>40</sup> no fundamental objection to divorce. This point was in a way settled theoretically for the people of this school by Milton’s famous writings in favor of divorce. But Montesquieu wrote of course in a Catholic country which made the public discussion more difficult. We have here a note to chapter 15 which he added later where he makes clear that the repudiation of<sup>41</sup> the wife for reasons of sterility is not permitted in Christianity which of course—as far as Catholicism is concerned. I mean that is an Old Testament provision. He only wanted to make clear that he knows that it is not a Christian teaching which is . . . . Yes.

**Student:**<sup>42</sup> In a way that puts Christianity in contradiction with itself because somewhere in the text he says repudiation for sterility doesn’t make any sense in a polygamous country because you have other wives. By implication it is a reasonable thing in a monogamous country.

**LS:** Yes, but he would be in favor of a much greater recognition of the rights of women than was customary in the eighteenth century. That goes without saying.

Now let us turn to a few passages of<sup>43</sup> Book [XVII]. There is a long discussion in chapter 3 of the climate of Asia where the other factors come in which Mr. Lawson has mentioned. We have to consider not merely north and south, but also<sup>44</sup> what the overall climate is, whether it is continental climate, as we would call it, and not an . . . climate for example, and also whether there are some things like natural frontiers, rivers and mountains useful as natural frontiers, or whether they are absent. The point which he makes in chapter 3 in the third paragraph: “Given these facts I reason as follows—”

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<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 15, 260.

**Mr. Reinken:** “Asia has properly no temperate zone, as the places situated in a very cold climate immediately touch upon those which are exceedingly hot, that is, Turkey, Persia, India, China, Korea, and Japan.”

**LS:** Skip the next paragraph.

**Mr. Reinken:** “Hence it comes that in Asia the strong nations are opposed to the weak; the warlike, brave, and active people touch immediately upon those who are indolent, effeminate, and timorous; the one must, therefore, conquer, and the other be conquered. In Europe, on the contrary, strong nations are opposed to the strong; and those who join each other have nearly the same courage. This is the grand reason of the weakness of Asia, and of the strength of Europe; of the liberty of Europe, and of the slavery of Asia.”<sup>xii</sup>

**LS:** Let us stop here. That is a great theme of course—what makes the discussion of climate so important for Montesquieu is this:<sup>45</sup> [there is a] relative guarantee given for freedom and power to Europe in contradistinction to other continents, especially Asia. But this implies—and that is not as obvious as the point I made before<sup>46</sup>—a big question mark attached to Christianity, because Christianity is of oriental origin. Now let us turn to chapter 5.

**Mr. Bruell:** In chapter 4 may I raise a quick question? He said in the first paragraph that Asia was subjugated thirteen times, but when I counted I only got twelve.<sup>47</sup>

**LS:** I do not know. I read . . .’s comment and he found also thirteen times. I wouldn’t know. I would have to look up a history book, or a history of Montesquieu’s time.

**Mr. Bruell:** I just mean Montesquieu’s own listing.

**LS:** You mean here? [Strauss counts the listing] Twelve. You are quite right. I do not know. If something occurs to you mention it to me.

**Student:** Well, the European colonization of Asia that was taking place at his time.

**LS:** Yes but was it subjugated at his time, that’s the question.

**Student:** Is it possible to say Christianity was that?

**LS:** No.

**Mr. Bruell:** But these conquests are all, I mean the Medes, the Persians, the Greeks didn’t go to China.

**Another Student:** He seems to be thinking of Asia Minor.

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<sup>xii</sup> *Spirit of Laws*, vol. I, bk. XVII, ch. 3, 266.

**Mr. Bruell:** He's thinking just about the part of Asia that was conquered say by Alexander.

**Student:** . . . .

**LS:** No, they remained very much at the border.

**Student:** But he talks about the fourth crusade . . . .

**LS:** I do not know. You are quite right. The very context causes one to raise this question. I don't know. Yes, now let us see in chapter 5, let us read a bit in there.

**Mr. Reinken:** "'That when the People in the North of Asia and those of the North of Europe made Conquests, the Effects of the Conquest were not the same.'

"The nations in the north of Europe conquered as freemen; the people in the north of Asia conquered as slaves, and subdued others only to gratify the ambition of a master."<sup>xiii</sup>

**LS:** In other words, he is saddled with this difficulty. After all, there are northern nations in Asia too as well as in Europe. And how come that the northern nations in Europe are freedom-loving and bring freedom, whereas the northern nations of Asia do not do that?<sup>48</sup> This he solves to his satisfaction in this chapter which we are reading here.

But a few passages in chapter 6 are more important. In chapter 6 he says, "power must therefore always be despotic in Asia," and that is a key point throughout the work, a thesis which has not simply been refuted since—which does not necessarily mean that it is true on the grounds given by Montesquieu. Unless one would say Japan is a clear proof [of] a powerful democracy in the Orient, but still I would like to wait another twenty years before [saying that]. Now let us read the two last paragraphs of chapter 6.

**Mr. Reinken:** "It is this which has formed a genius for liberty that renders every part extremely difficult to be subdued and subjected to a foreign power, otherwise than by the laws and the advantage of commerce.

"On the contrary, there reigns in Asia a servile spirit, which they have never been able to shake off, and it is impossible to find in all the histories of that country a single passage which discovers a freedom of spirit—"

**LS:** "A free soul."

**Mr. Reinken:** "—a free soul; we shall never see anything there but the excess of slavery."<sup>xiv</sup>

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. XVII, ch. 5, 267.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. XVII, ch. 6, 269.

LS: No, that's very bad. "One will see there never anything but the heroism of servility." This goes much further than Nugent seems to believe. After all, we must never forget that the Bible, *never* forget, that the Bible, Old and New Testament, belong to Asia. This was surely known to Montesquieu. Therefore, when one reads such a terrible thing as this—there is not a single trait which marks a free soul in Asia—that's absolutely shocking for anyone who knows the Bible and has a tiny<sup>49</sup> bit of an understanding of it. And then he adds here<sup>50</sup> [that] there is something heroic in the Bible. He is very far from denying that, but the heroism of servitude, of being the servants of God of course.

That is a part, and the most important [part], of the greatness of Montesquieu, that he sees the extent and implication of the question he raises, and that he steps on many toes by that is inevitable. That is inevitable for everyone who is not satisfied with leaving it at the surface and being one hundred percent in agreement with the mainstream, or some other expressions which we have heard more recently. That is impossible.

We<sup>51</sup> disregard here entirely the question whether all data which Montesquieu presupposes are correct, and above all how many data he did not know which have come to light since and which would compel one to reformulate the problem very radically, but we must try to understand him in his own terms without using hindsight and see what it amounts to. The climate chapters are surely of crucial importance, but they, as it were, lay the foundation for what will later be discussed in the books on commerce.

Commerce is<sup>52</sup> connected with climate. I mean the distribution of the raw materials, the activity and spirit of enterprise, more characteristic of some countries than of others—this is all connected with the climate. And then he has to bring these two things together. Here we have the natural conditions, climate and its consequences, and here we have the politically desirable, the British constitution.<sup>53</sup>

What are the natural conditions, the sub-political conditions, which make the British constitution tick and then—he gave already part of the answer is the climate; and the other part of the answer is commerce, the commercial northern nations. Northern is a wide sense where all of Europe would in a way be northern.<sup>54</sup> That is the home of freedom, and for the rest of the world one cannot do anything. Well of course one can have commercial relations with it, what a nasty man would call exploitation, but<sup>55</sup> even that can be mitigated because the Negro slavery he wants to have abolished if possible.<sup>56</sup>

We can say [this] with all deliberative speed, but the emphasis is more on deliberation than on speed. This is more or less if we wanted to try to figure out how it would look with a light to some things which we know. That is what he has in mind. Of course what he suggests, a man who would be a Montesquieuan today would be on the extreme right, as Senator Goldwater once put it, as said of him, an eighteenth century Fox. But still, he was in a way the vanguard in his lifetime.<sup>57</sup>

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<sup>1</sup> Deleted "Student: ' . . . and that in Asia which permits many have therefore a certain relation to the climate.' LS: Drop the next part."

<sup>2</sup> Deleted "of course."



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<sup>3</sup> Deleted “And also I do not believe....”

<sup>4</sup> Deleted “Yes.”

<sup>5</sup> Deleted “You see.”

<sup>6</sup> Deleted “yes, sure.”

<sup>7</sup> Deleted “Well.”

<sup>8</sup> Deleted “And of course.”

<sup>9</sup> Deleted “Now.”

<sup>10</sup> Deleted “Yes.”

<sup>11</sup> Deleted “You see.”

<sup>12</sup> Deleted “Yes.”

<sup>13</sup> Deleted “no, no.”

<sup>14</sup> Deleted “I see.”

<sup>15</sup> Deleted ““Women have naturally so many duties to fulfill—“

LS: No, no. ‘One finds morals more pure ....’”

<sup>16</sup> Deleted “of course.”

<sup>17</sup> Moved “why has.”

<sup>18</sup> Deleted “has.”

<sup>19</sup> Moved “the.”

<sup>20</sup> Deleted “of course.”

<sup>21</sup> Deleted “now.”

<sup>22</sup> Deleted “referred to earlier.”

<sup>23</sup> Deleted “a.”

<sup>24</sup> Deleted “of course.”

<sup>25</sup> Deleted “should be stated.”

<sup>26</sup> Deleted “Well.”

<sup>27</sup> Deleted “no.”

<sup>28</sup> Deleted “LS: All right.”

<sup>29</sup> Deleted “say.”

<sup>30</sup> Deleted “Good.”

<sup>31</sup> Deleted “Well.”

<sup>32</sup> Deleted “Well.”

<sup>33</sup> Deleted “of course.”

<sup>34</sup> Deleted “you know.”

<sup>35</sup> Deleted “what is—I’m sorry I can not reconstruct, I have so often read that—what is worse, to regard one’s powers as non-existent or as bad? No, no.”

<sup>36</sup> Deleted “I’m sorry I can not....”

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<sup>37</sup> Deleted "Yes."

<sup>38</sup> Deleted "that is."

<sup>39</sup> Deleted "and."

<sup>40</sup> Deleted "of course."

<sup>41</sup> Deleted "the woman, of."

<sup>42</sup> Deleted "Well."

<sup>43</sup> Deleted "the next."

<sup>44</sup> Changed from "but you have also to consider."

<sup>45</sup> Deleted "the."

<sup>46</sup> Deleted "this implies of course."

<sup>47</sup> Deleted "And I wondered if..."

<sup>48</sup> Deleted "And."

<sup>49</sup> Deleted "little."

<sup>50</sup> Deleted "well."

<sup>51</sup> Changed from "Yes, well we of course."

<sup>52</sup> Deleted "of course."

<sup>53</sup> Deleted "And."

<sup>54</sup> Deleted "And."

<sup>55</sup> Deleted "that can be."

<sup>56</sup> Deleted "And."

<sup>57</sup> Deleted "Now is there any other point any one of you would like to bring up? We have I think three more meetings."

**Session 15: February 22, 1966**

[In progress] **Leo Strauss:** This is<sup>1</sup> rather speculative and depends on many other things. A more simple question: What is the connection between the subject of Book XVIII and this particular discussion of the [Salic] laws<sup>2</sup>?

**Student:** He takes the proposition that the Salic law was developed in a non-agricultural society.

**LS:** In a pastoral society.

**Same Student:** In a pastoral society, as the connecting link.

**LS:** That's the point. This is the connection. And so a certain difficulty comes because of [the] apparent contradiction to it, and then he busts the case wide open, although the subject really belongs to later books.<sup>3</sup>

<sup>4</sup>You were very careful in pointing out apparent contradictions and then [trying] to resolve them. For example, the general statement [that] inhabitants of fertile countries are bound to be enslaved, and then we find some Chinese provinces very fertile where there is relatively great freedom. And you showed then that there is this very particular cause which explains the variation. In this you acted quite well. You made ample use of the distinction between the liberty of man and liberty of the citizens which Montesquieu uses occasionally here. We will turn to that when we come to that.

I would like to mention now, before we turn to the discussion, a general subject which is always present in my mind but I simply didn't find the time or occasion to mention it. The occasion I had, but the time I didn't have. And that has something to do with the fact that it seems to be forgotten in many circles that clarity of thought, or the quality of thought, and the quality of expression, thinking and speaking have some mysterious relation. And I believe the training which young people get now in this country as well as in some other countries is no longer what it was in this respect. You know that was a famous complaint, the former education was too formal. They had to learn spelling and rules of grammar, and other things, instead of like young Paris to be led on the green pastures of pop culture and whatever else might be thought to be substantial. Now one word which is now grossly misused—and you don't mind my using you as a guinea pig?—is the word “logical.” You said on a certain occasion “logically distinct.” Would “distinct” not have done that? For example, if you take a cat and a dog. They are distinct. Do you have to say they are logically distinct? Logically distinct would mean if they are not really distinct you can only distinguish them in thought. Say the genus animal, and the species cat, you cannot separate the “animalness” *really*,<sup>5</sup> as you can separate its liver from its stomach. And therefore you say in such cases probably logical distinction in contradistinction to other kinds of distinction.

Another point which is probably graver is this. You said nature and right are never used in this book in a philosophic sense. How do you know that? Your statement implies that the terms do occur, otherwise you wouldn't have added the qualification.

**Same Student:** He uses the word *droit* in French to mean *droit des gens*, which is better translated as law. He uses the term "nature" in the terms of "*la nature des lois*," or something like that, in other words, "the character of." And then once or twice he uses it in the sense of nature, in the sense of something physical. Nature causes trees to grow, or brooks to run, which seems to be different than an assertion that it is natural that men have a certain moral dictum, or that nature dictates—crimes against nature for example.

**LS:** You mean here nature in the context in which it has some moral implication? This you mean by nature used in a philosophic sense. I thought you meant to exclude such cases as when we speak colloquially all the time and say, naturally he limps because we have seen him limping for many years, and then we say naturally he limps. But there is no deeper meaning implied than<sup>6</sup> [what] we are accustomed to<sup>7</sup>, and everybody knows it. But one must be careful in these matters, you know.<sup>8</sup>

Let us turn to this book. Now a few general remarks. We have finished the books on climate and we come now to the book dealing with the nature of the *terrain*. What is this in English?

**Student:** The soil.

**LS:**<sup>9</sup> The nature of the soil. But would you consider the difference between mountainous and non-mountainous, this would not be soil?

**Student:** You would say terrain as they do in the army manuals.

**LS:** . . . we might leave it at terrain.<sup>10</sup> In developing his doctrine of the climate, Montesquieu has made the remark, which we have discussed already before but to which I would like to draw again your attention, in Book XIV, chapter 10, the end. The different needs in different climates form different manners of living, and these different manners of living have formed the different kinds of laws. This is a very clear statement of what in a somewhat more developed form came to be called the materialistic philosophy of history.

Now this is not contradicted—and this is<sup>11</sup> a very important ingredient of Montesquieu's teaching.<sup>12</sup> This view is not contradicted by the fact that the laws act, or should act, as a corrective for the defects caused by the climate.<sup>13</sup> We have discussed the interesting example of the harem. You have a surplus of women which makes impossible monogamy but creates other disorders. And these disorders are not disposed of by the climate. Men have to figure out something of how to get rid of these disorders, and what men have figured out is to lock the [women] up<sup>14</sup>. But this law, nevertheless, is ultimately due to the climate of course. If there were not a surplus of women, which surplus is due to the climate, the whole institution of the harem would be baseless. What is your point?

**Student:**<sup>15</sup> In that case you couldn't really say that the law is determined or formed by the climate because it would also depend in an efficient sense on how clever the men were in figuring this out.

**LS:** That is true, that we must not entirely forget. But nevertheless, the primacy of the climate is not questioned, is it not?<sup>16</sup> The true question concerns<sup>17</sup>—this is already implied in that point I mention now<sup>18</sup>—the “ought.” If the climate determines the manner of living, and the manner of living determines the laws, nothing can be done about it. All laws are reasonable because they correspond to the natural conditions.

Now as an example of this “ought” I take Book XVI, chapter 15: “It is therefore a general rule that in all laws where the law gives to men the right to repudiate, it ought to give it also to the women. Even more, in climates where women live in domestic slavery, it seems that the law ought to permit to the women repudiation, and to the husbands only divorce.”<sup>19</sup> One of many examples, but it is striking because it is the last one we read. This “ought” means of course not the ought coming from a positive law—that's out of the question—and therefore from natural law, i.e., from natural reason applied to this particular subject. If you are confronted with this and this situation, as an intelligent human being and not hampered by any positive law, how would you decide it? That is the practical meaning of natural right in such cases.<sup>19</sup>

The root of that law of nature is<sup>20</sup> the fundamental nature of man, in contradistinction to the varying and accidental natural conditions. This fundamental nature of man is preserved in Montesquieu. The difference from classical political philosophy, from Plato and Aristotle especially, is only this:<sup>21</sup> there is no natural end of man in Montesquieu. At least we have not found any trace of it yet. In Plato and Aristotle it is understood that there is a natural end of man, but there is also matter as somehow limiting, possibly limiting, the ability of individuals, or of nations, to achieve the human goal. In this second point<sup>22</sup> there is perfect agreement between Montesquieu and Plato and Aristotle. The un-doctrinaire character of Plato and Aristotle and that of Montesquieu is undeniable. But the roots are very different because there is no end of man. You make a perplexed face, what is the reason for that?<sup>23</sup>

Well this much I believe has become clear to you from all our discussions: that there is a fundamental difference between Montesquieu and classical political philosophy.<sup>24</sup>

In spite of this truly fundamental difference between Montesquieu and Plato and Aristotle, he has one thing in common with them, perhaps more than any other political thinker of the seventeenth and eighteenth centuries. And that is what we may call colloquially the flexibility.

For Plato and Aristotle there is one and only one end which can never be changed, but this doesn't mean that it is possible to achieve that end equally in all cases—[for]

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 15, 260.

individuals or nations.<sup>25</sup> Therefore the task of the statesman would consist in forming a judgment [as to] how much can be reasonably expected here now.<sup>26</sup>

But the root of the “ought” in Montesquieu, as distinguished from Plato and Aristotle, are these very rudimentary things of which he has spoken in Book I, chapter 2: the elementary needs, the fundamental needs, and some consequences of them which we have partly observed and partly will observe. Incidentally, since there is without any question a connection between this statement of Montesquieu I read first and Marxism, how does Marx get his “ought,” how would you put it? After all, there is an “ought” there in Marxism. How does he get it?

**Mr. Reinken:** Isn’t it, from the material conditions all progress is going in one way. Since you can’t beat it, join it.

**LS:** That is true. That would mean there is no “ought.” But the clear case, if you take the *Communist Manifesto* and later statements based on that or in agreement with it, [is that] the proletarians are simply compelled by their situation to rebel. And of course they learn the hard way that hunger revolts and so on do, but politically . . . etc, etc. But they are compelled by their situation to make a revolution, to abolish the bourgeois system. It is in the nature of things that the abolition of this particular class system means the end of all class systems. And therefore, after considerable liquidation of people who are too much addicted to the capitalist system—but this is only temporary and can last ten or twenty years, and a couple million men or more doesn’t make any difference—then we have, or [are] on the way to having, a classless society. So here<sup>27</sup> you don’t have to raise the question at all, because your situation as a proletarian dictates it to you. But if you don’t happen to be a proletarian, like Karl Marx himself, this is not quite sufficient. Yes.

**Student:**<sup>28</sup> There’s a necessity in the sense that if there’s going to be any political action based on the *Manifesto*, it’s going to have to be political action directed toward either speeding up or retarding this process, presumably speeding up.

**LS:** But still<sup>29</sup> there is one difficulty which was perhaps not as clear to Marx as it should have been, but of which he could not have been wholly unaware, namely this: that not all processes are necessarily progressive. After all, let us assume that everything is right as he says, and yet the net result of this final revolution would be the greatest disaster which has ever befallen man. There must be some reasoning which would show that a communist society with all means of production socialized and with the other fundamentally egalitarian measures required is something to look forward to. How does he know that?

**Student:** The re-establishment of good<sup>30</sup> primitive conditions and the end of the alienation of man. Of course there is a certain problem there, because, why did man ever—material necessity, but that doesn’t quite solve the problem of why men departed from these good primitive conditions of earlier times—

**LS:** Yes, this had been disposed of by Rousseau's *Discourse on the Origin of Inequality*, that the natural situation compels them to get out of that.

**Mr. Reinken:** If the realm of freedom<sup>31</sup> [in this] millennium does not seem to have a clearly best activity, it does have the next best thing—these German absolutes, it's like a smorgasbord table at which the happy Marxist gets a piece of every dish. Consequently he will overlook nothing which is human, philosophizing in the morning—

**LS:** Oh yes, that is a famous remark of Marx. The funny thing is that he will do the milking in the evening without having made a provision that there would be electric light in the stable [laughter].<sup>32</sup> Today there is no problem in milking at nighttime, as you know. But one hundred years ago it was a problem because if you had the other kinds of lights the whole thing might burn down [laughter].<sup>33</sup> But still, when one reads Marx's early writings, prior to the *Communist Manifesto*, one gets<sup>34</sup> a thought out answer. I don't mean to say that it is good enough.

**Student:** In the early writings, in the "Poverty of Philosophy" and the "Economic and Philosophic Manuscripts of 1844,"<sup>35</sup> it is natural that man realize his personality.

**LS:** Develops all his faculties.

**Same Student:** And this can only be realized through matter.<sup>36</sup> Matter is not merely an object to be worked upon, but the matter in conjunction with his fellow man is the expression of personality. And this is the deepest sense of alienation: that is, the object is taken away from him, so his personality is lost.<sup>37</sup> In the communist state men will be free to realize this goal.

**LS:** Or even the most favored members of the upper classes could fully develop their faculties somewhere necessarily atrophied because of the fact that this was not universally shared. But one can even state it in greater generality and bring it closer to Aristotle's formulation.

When Marx takes issue with the two schools of morals, the hedonistic school who talk of pleasure, and the other school who talk of duty<sup>38</sup>, of virtue, he says that both are one-sided; and what he suggests is meant to get rid of this fundamental difficulty once and for all. I do not remember now chapter and verse, I do not even remember whether this is explicitly said by Marx anywhere, but this he suggested to me at least: the notion that the good life consists in unimpeded virtuous activity, unimpeded as Aristotle also puts it. So all reasonable moral demands are satisfied if everyone can engage in unimpeded virtuous activity.

And as a matter of fact in a Communist society, as distinguished from the pre-Communist dictatorships of the proletariat, all men will in fact engage in virtuous activity because all the impediments to that which existed in class society have been abolished. This is not farfetched what I say because in the very interesting beginning of his analysis of value in the first book of *The Capital*, what he does is first simply to restore certain fundamental

analyses made by Aristotle.<sup>39</sup> [It] is a strange thing in modern times that these extreme and radical men opposing their predecessors returned to something old, Aristotelian or Platonic, which their predecessors had dismissed.<sup>40</sup>

There are other remarks. Marx was of course a very educated man. For example, what he said about the economic writings of Xenophon is very reasonable, and I haven't found this in any other modern author. But this is<sup>41</sup> Marxism at its best, so to say, this proposition, that the unimpeded virtuous activity which Aristotle declared to be that which is by nature noble and pleasant at the same time was hitherto not possible except by a means of some kind of self-deception and hypocrisy. You know, there are nice people who are true gentlemen, yet they close their eyes to the injustices to which they owe their being able to be gentlemen—this kind of thing. But this only in passing.

What I want to say about this is only that without a notion of the good life one cannot say anything, and even Marx cannot escape it. The simplistic Marxist argument is of course that<sup>42</sup> the dialectical necessity driving to the Communist society is open to the simple questions; it may be necessary by some historical dialectic, but that doesn't prove at all that it is desirable.

Now to come back to Montesquieu and his basis, the natural right teaching, the basis of which is a teaching regarding human nature. This is still so in Montesquieu without any hesitation. But after Montesquieu the question was raised—I spoke of it in connection with Rousseau on an earlier occasion, but I take now a somewhat looser or broader slant—in this way: But if nature is to be the standard, would this not put a limit to progress? The simplest case is the fair sex. You have heard such bad things about the fair sex, and you ladies were so generous not to resent it. But this<sup>43</sup> was all based on the premise that the male sex is by nature the superior sex. Now how can you have full equality of the two sexes if nature retains her canonic function? This came later. But it was prepared by Rousseau—<sup>44</sup>not regarding the two sexes because there he is quite old-fashioned. One only has to read the *Emile*. The education which the boy gets and the education which the girl gets are entirely different.

But Rousseau does not use this point that nature might put a limit to progress.<sup>45</sup> Nevertheless, Rousseau is not a believer in infinite and unlimited progress. How does Rousseau arrive at this, his relative sobriety, in spite of this, his beginning? What is the absolute ceiling to progress in Rousseau? Not simply human nature, but the character of social man, of man living in society. Society necessarily breeds vice. And vice doesn't mean here what it means in the police departments in this country, but it means all forms of malice and viciousness. *Amour-propre*, as he calls it, which is pride or vanity, necessarily, and [the] desire for superiority to others and for being recognized as superior by others—that is the poison of human life, and that emerges necessarily in society.<sup>46</sup> Therefore society will always be coercive, counteracting that poison. But that was a stage which was then overcome by the German followers of Rousseau who in their turn were followed by Marx. I leave it at this general reminder.



And now let us turn to Book XVIII.<sup>47</sup> He first states his general point that fertility leads to monarchy, or favors monarchy, and sterility—of the soil of course—favors republics. We will read the second paragraph.

**Mr. Reinken:** “Thus monarchy is more frequently found in fruitful countries, and a republican government in those which are not so; and this is sometimes a sufficient compensation for the inconveniences they suffer by the sterility of the land.”<sup>ii</sup>

**LS:**<sup>48</sup> Montesquieu simply says, this is sometimes a compensation. He is not only turgid, but he also wants to be understood by the meanest capacities, our friend Nugent.<sup>49</sup> You see, however, how polite Montesquieu is: he says “sometimes.” He doesn’t want to appear to be too anti-monarchic.

**Student:** Are the terms “monarchy” and “republic” an accurate rendition of the sense of what Montesquieu is saying in the French in that paragraph? He refers to government of one and government of many. Is that an accurate translation?

**LS:** No, it is not a literal translation, “monarchy” and “republic,” but more literal would be “government of a single man” and “government of more than one.”

**Same Student:** I was just wondering whether “government of one” couldn’t be a despotism.

**LS:** Sure, it would include it.<sup>50</sup> Of course it would be very helpful because if it is true that fertile soil makes people cowardly because they have tangible property which can be taken away from them, they would be born subjects of a despot. Good you drew our attention to that.

By the way, this subject of fertility and sterility was discussed by a great writer of antiquity in a special case indeed, but with something of the same tendency. And that was Thucydides: the poor soil of Attica versus the fertile soil of Laconia, the country of the Spartans. You find this in the first few chapters of Thucydides. I couldn’t tell you exactly where.

He develops that also in chapter 2, but we do not have the time to read all this. He says at the end of the first paragraph of chapter 2:

**Mr. Reinken:** “The liberty they enjoy, or, in other words, the government they are under, is the only blessing worthy of their defense. It reigns, therefore, more in mountainous and rugged countries than in those which nature seems to have most favored.”<sup>iii</sup>

**LS:** You see,<sup>51</sup> this blessing of nature, fertile soil, becomes questionable because it leads to a disposition to servility. Now let us turn to the next chapter. Read the first two paragraphs.

<sup>ii</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 1, 271.

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 2, 272.

**Mr. Reinken:** “Countries are not cultivated in proportion to their fertility, but to their liberty: and if we make an imaginary division of the earth, we shall be astonished to see in most ages deserts in the most fruitful parts, and great nations in those where nature seems to refuse everything.”

**LS:** Again, “seems,” just as he said before, because where nature seems to refuse, she gives a blessing in disguise. Yes.

**Mr. Reinken:** “It is natural for a people to leave a bad soil to seek a better, and not to leave a good soil to go in search of worse. Most invasions have, therefore, been made in countries which nature seems to have formed for happiness—”

**LS:** No, here he omits the “seems:” “which nature had made for happiness.”

**Mr. Reinken:** “—and as nothing is more nearly allied than desolation and invasion, the best provinces are most frequently depopulated, while the frightful countries of the North continue always inhabited, from their being almost uninhabitable.”<sup>iv</sup>

**LS:** In the paragraph after the next he<sup>52</sup> [says] these “happy climates have therefore hence been depopulated by other migrations, and we don’t know the tragic things which have taken place at the time,” meaning murders and so on. These happy climates lead to tragedies. Perhaps you can say that in the next chapter, at the beginning of chapter 4, we find a solution.

**Mr. Reinken:** “The barrenness of the earth renders men industriousness, sober, inured to hardship, courageous, and fit for war; they are obliged to procure by labor what the earth refuses to bestow spontaneously. The fertility of the country gives ease, effeminacy, and a certain fondness for the preservation of life.”<sup>v</sup>

**LS:** So, in other words, a stepmotherly nature is better for men than a kind mother. This is an important point. I think we can leave it at that.<sup>53</sup> In the next chapter he speaks of the special case of people of islands, because they are<sup>54</sup> not as easily conquerable as continental lands.<sup>55</sup> Although he doesn’t mention it, we cannot help thinking of one particular blessed spot of which he has spoken before.<sup>56</sup>

In other words, the point which comes out here is this. If nature is inimical to man, this fosters human industry, or *may* foster. It must also be rather cold, because if it is very hot then the famous laziness will follow. So inimical nature fosters human industry, and this human industry<sup>57</sup>, this spirit of enterprise fosters freedom. This is made clear in the next chapter, chapter 6.

**Mr. Reinken:** ““Of Countries raised by the Industry of Man.”

<sup>iv</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 3, 272.

<sup>v</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 4, 273.

“Those countries which the industry of man has rendered habitable, and which stand in need of the same industry to provide for their subsistence, require a mild and moderate government. There are principally three of this species: the two fine provinces of Kiangnan and Tsekiang in China, Egypt, and Holland.

“The ancient emperors of China were not conquerors. The first thing they did to aggrandize themselves was what gave the highest proof of their wisdom.”

**LS:** Incidentally, this shows that despotic rule is not always as idiotic as he had stated in Book II.

**Mr. Reinken:** “They raised from beneath the waters two of the finest provinces of the empire; these owe their existence to the labor of man.”<sup>vi</sup>

**LS:** More literally, “they were made by man.”<sup>58</sup>

Let us stop here.<sup>59</sup> That is a special case.<sup>60</sup> This was the way in which Mr. Leonard rightly solved the difficulty. Because they owe their being to men. Man owes the benefit he has from them to his own labor and vigilance. They keep men industrious and vigilant.<sup>61</sup> Therefore they do not have the bad effect of a kind climate. What owes its being to man is superior to what owes its being to nature. Because here you have both things, fertility plus industry; whereas in a naturally fertile country you would have only the fertility, but no industry.<sup>62</sup>

This reminds me, and perhaps some of you, of a remark by Locke about this great problem: the relative importance of nature on the one hand and<sup>63</sup> human industry on the other. I don’t remember it literally, but almost literally: Nature supplies us only with almost worthless materials. All worth, all value to speak of, stems from man. And that<sup>64</sup> became an important ingredient of later economic teaching and of Marx himself. You know, the gratitude for what man has received was underlying the older doctrine. The revolt against that niggardly nature—man must take care of himself—that is what came to the fore in modern times.

Now you see in chapters 6 and 7 the headings:<sup>65</sup> chapter 6, “Of Countries Formed by the Industry of Man”; chapter 7, “Of the Works of Man.” The emphasis is here on men, but in this perspective: man as distinguished from nature. Now let us read the beginning of chapter 7.

**Mr. Reinken:** “Mankind by their industry, and by the influence of good laws, have rendered the earth more proper for their abode. We see rivers flow where there have been lakes and marshes: this is a benefit which nature has not bestowed; but it is a benefit maintained and supplied by nature.”<sup>vii</sup>

<sup>vi</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 6, 274.

<sup>vii</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 7, 274.

**LS:** “Maintained” only, “supplied” is Nugent’s misleading addition. Here he makes this point clearer than he did before: “is a good which nature has not made.” Now let us see. Let us read the next chapter.

**Mr. Reinken:** “‘The general Relation of Laws.’

“The laws have a very great relation to the manner in which the several nations procure their existence. There should be a code of laws of a much larger extent for a nation attached to trade and navigation than for a people who are content with cultivating the earth. There should be a much greater for the latter than for those who subsist by their flocks and herds. There must be a still greater for these than for such as live by hunting.”<sup>viii</sup>

**LS:**<sup>66</sup> This arrangement is perfectly orderly here. The larger codes, and down to the bare minimum of any legal arrangement. But is there a connection between this question here discussed, the number of laws, and the desirability of that particular state? After all, the number of laws is in itself nothing desirable, unless it is the reverse side of some very great good. Yes?

**Mr. Bruell:** From chapter 12 we learn the importance of specific civil laws.<sup>67</sup> Those would be more likely to be found where there are a large number of laws, because a small number can’t be very specific.

**LS:** Yes, but he connects it up here with the way in which people earn their living, i.e., commercial and seafaring nations.

**Mr. Reinken:**<sup>68</sup> The amount of comfortable self-preservation per square mile goes up with the series.

**LS:** Yes, I also believe that this is a hierarchical order, so that the commercial and seafaring nations are more civilized than those which are only agricultural, and the agricultural more than the mere pastoral, and the pastoral still more than the hunting. I think the common-sensical view, which we would find out through a Gallop poll of sorts, would still be in agreement with Montesquieu. So it is not quite surprising today.<sup>69</sup>

**Student:**<sup>70</sup> In terms of liberty I think that Montesquieu sees liberty as found at the two extremes, though there are different forms of liberty.

**LS:** That is a very good point, but<sup>71</sup> you think he makes much of that?

**Same Student:**<sup>72</sup> I think the whole system of the book falls apart if you don’t read that into what he said.

**LS:** Because if this were really crucial, then it would be a kind of approximation to Marxism. You have communism at the beginning and you will have it at the end. And

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<sup>viii</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 8, 275.

from this point of view man's beginning was very good and what was in between was sanguinary and terrible.

**Student:**<sup>73</sup> It seems a bit more complicated because one chapter after that—the piece about the terrain of America—it says that the American Indians lived in this reasonably free, savage manner, but this wouldn't have worked in Europe anyway. So at least as far as Europeans are concerned there is not much choice. They have to go to one extreme, and the other extreme doesn't exist for them.

**Mr. Bruell:** It's complicated by the fact that what he calls liberty with these savages, his statements about that seem to be rendered somewhat doubtful by what he says about superstition.

**LS:** Well this was brought up by Mr. Leonard. The central theme of his paper was the ambiguity of liberty. You said liberty means something very different in the two cases. We will take this up later.

Now in chapter 10 he says the density of the population is proportional to the husbandry. In other words, hunters and pastoral people need much more territory<sup>74</sup>. Chapter 13 is on the civil laws of people who do not cultivate the earth. Let us call them simply the primitive people. The previous chapter dealt already with them. Now let us read only the fourth paragraph.

**Mr. Reinken:** “These people wander and disperse themselves in pasture grounds or in forests. Marriage cannot there have the security which it has amongst us, where it is fixed by the habitation, and where the wife continues in one house; they may then more easily change their wives, possess many, and sometimes mix indifferently like brutes.”<sup>ix</sup>

**LS:** So here he comes close to suggesting that monogamy is a function of the mode of production. To cultivate the earth you must have a fixed habitation<sup>75</sup>—a house is necessary. There is needed someone who takes care of the domestic work, naturally a woman. And you don't want to have disorder by having too many people who have the right to say, so one is in order; to say nothing of the land itself and the proper descendents, the heirs.

Now we come to that chapter 14 which has attracted Mr. Leonard's attention especially, “Of the political State of Peoples who do not cultivate the Earth;” again he is dealing with the primitives.

**Mr. Reinken:** “These people enjoy great liberty; for as they do not cultivate the earth, they are not fixed: they are wanderers and vagabonds; and if a chief should deprive them of their liberty, they would immediately go and seek it under another, or retire into the woods, and there live with their families. The liberty of the man is so great among these people that it necessarily draws after it that of the citizen.”<sup>x</sup>

<sup>ix</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 13, 277.

<sup>x</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 14, 277.

**LS:** The liberty of the citizen. This is his crucial distinction between liberty of man and liberty of citizen.<sup>76</sup> What do we make of that distinction? You brought it together with the distinction earlier made by him.

**Student:** In Book XI, I think it's chapter 3, he speaks of independence and liberty and it seemed to me that he was using the term "independence" in the same sense in which here he uses independence of the man.

**LS:** I believe you are right. It is surely in the beginning of Book XI.

**Mr. Reinken:** Book XI, chapter 3, paragraph 2: "We must have continually present to our minds that which is independence and that which is liberty."<sup>xi</sup>

**LS:** In other words, independence is only possible in a pre-political condition, and so is this liberty of man.

**Student:** I would think that, in this interpretation, because it's easy for man to pull up stakes . . . the farmers of that community are careful not to have an oppressive government.

**LS:** But in civilized society the liberty of man is very small, not to say zero, and therefore how you can have political liberty, liberty of the citizen, is a very great question. So the difference between uncivilized people and civilized people would be this: It is very easy for uncivilized people, pre-agricultural people, to be free. But<sup>77</sup> that means on a very low level. And the great problem of political philosophy, or political science, is to show how you can have the advantages of civilization and at the same time the advantages of freedom. That is surely what he thinks.<sup>78</sup>

**Student:** I think too that Montesquieu says that when you get to the civilized liberty you have a much better liberty than you had in the uncivilized state.

**LS:** Yes, unless you are exposed to a particularly beastly despot. Whether the sentence doesn't mean more than what we just said I do not know. It rings very rich in meaning, but I cannot get out more than what I just stated.

Now he interrupts this. Chapters 11-14 dealt with primitives, as we can say. Chapter 15 deals with non-primitives clearly, people who know the use of money. But chapter 16 again deals with more or less primitive people, and also the following chapters. So 15 is a kind of interruption of the sequence. Yes?

**Student:**<sup>79</sup> Except that in a way 16 and 17 are really more interesting for what they say about the non-primitives.<sup>80</sup> In 16 he talks about the necessity of greater laws when you have money because of the greater possibilities of injustice. So it's really connected with economics.

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<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XI, ch. 3, 150.

**LS:** Yes but still, the titles are not negative. And if you look through the rest of the book these all deal with rather savage people, the Tartars, the Germans, and so on. There is no coherent discussion here of civilized peoples in this respect as there is of uncivilized people. That is, I believe, peculiar [to] this book, and would need some understanding. Now let us turn to chapter 15.

**Mr. Reinken:** “Aristippus being cast away, swam and got safely to the next shore, where, beholding geometrical figures traced in the sand, he was seized with a transport of joy, judging that he was amongst Greeks, and not in a nation of barbarians.

“Should you ever happen to be cast by some adventure amongst an unknown people; upon seeing a piece of money you may be assured that you have arrived in a civilized country.”

**LS:** In other words, he generalizes from the Greek<sup>81</sup>: In his case the addressee at least is identified or is put in parallel with Aristippus, a famous hedonistic philosopher prior to Epicurus. Whether that has any meaning—because as far as I know, the story is told of Plato or of a Platonist ordinarily. I never have seen it told of Aristippus<sup>82</sup>. Now go on.

**Mr. Reinken:** “The culture of lands requires the use of money. This culture supposes many inventions and many degrees of knowledge and we always see ingenuity, the arts, and a sense of want—”

**LS:** “of wants.”<sup>83</sup>

**Mr. Reinken:** “—and wants making their progress with an equal pace. All this conduces to the establishment of a sign of value.”<sup>xii</sup>

**LS:** So<sup>84</sup> there is a connection between intellectual progress and the progress of our wants, more specifically, between natural progress and technological or social progress. Here we are at the opposite pole of the passage we read in one of the earlier books when he contrasted the moderns who talked about trade<sup>85</sup>, finance, and money with the ancients who despised these things and talked only of virtue. And that is a change going on throughout the book. I’m sorry, Mr. Mueller?

**Mr. Mueller:** I was just thinking of that passage too but that apparently they talked of virtue *and* geometry.

**LS:** Virtue and geometry.

**Mr. Mueller:** They are very closely connected.

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<sup>xii</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 15, 277–78.

**LS:** Yes, that is a specialization of this older view but which doesn't make it doubtful, does it? Unless geometry is used for measuring land and for grabbing land, that would be different. Mr. Bruell?

**Mr. Bruell:** There seems to be a parallel to this, or an opposition, in chapter 13, third paragraph.

**Mr. Reinken:** "Amongst such nations as these the old men, who remember things past, have great authority; they cannot there be distinguished by wealth, but by wisdom and valor."<sup>xiii</sup>

**LS:** "By the hand and by the counsels they give," meaning counsels based on experience, what has proven to be salutary in the past and therefore [is] supposed to be salutary in the future. Yes, there is no question that is quite true. Now let us see the headings of chapters 16 and 17. These chapters deal with the people who do not have the use of money. We read only the last paragraph of chapter 17.

**Mr. Reinken:** "The people who have no money have but few wants; and these are supplied with ease, and in an equal manner. Equality is then unavoidable; and hence it proceeds that their chiefs are not despotic."

**LS:**<sup>86</sup> This is to the question we had before. Here you have few wants and freedom. But we want many wants, or we want the satisfaction of many wants. We want civilization and freedom. That is a problem. Now the next chapter is indeed very important.<sup>87</sup>

**Mr. Reinken:** "If what travelers tell us be true, the constitution of a nation of Louisiana, called the Natchez, is an exception to this. Their chief disposes of the goods of all his subjects, and obliges them to work and toil, according to his pleasure. He has a power like that of the grand seigneur, and they cannot even refuse him their heads. When the presumptive heir enters the world, they devote all the sucking children to his service during his life. One would imagine that this is the great Sesostris. He is treated in his cottage with as much ceremony as an emperor of Japan or China."<sup>xiv</sup>

[Chapter 18]: "The prejudices of superstition are superior to all others, and have the strongest influence on the human mind—"

**LS:** No, no, "and its reasons are superior to all other reasons."

**Mr. Reinken:** "—and its reasons are superior to all other reasons. Thus, though the savage nations have naturally no knowledge of despotic tyranny, still they feel the weight of it. They adore the sun; and if their chief had not imagined that he was the brother of this glorious luminary—" [Laughter]

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 13, 276–77.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 17, 279.



**LS:** The “glorious luminary” is Nugent’s. You can almost figure it out in advance. Now read this sentence again.

**Mr. Reinken:** “They adore the sun; and if their chief had not imagined that he was the brother of the sun, they would have thought him a wretch like themselves.”<sup>xv</sup>

**LS:**<sup>88</sup> Now here we are at the opposite pole of Karl Marx, I take it, that it is a sheer accident of an imagination of an individual which explains a certain social institution, at least according to the ordinary understanding of Marx. Why is this possible for Montesquieu and not possible for Marx? I think that one can understand easily. What is the peculiarity of man, that which distinguishes man from all other animals, according to Marx?

**Student:** . . . .

**LS:** Yes, in other words, that he has to engage in a kind of production in which other animals, not even spiders or bees, have to engage—conscious production. But the primary thing is the needs which he has to satisfy. And what the needs arouse primarily are modes of production.<sup>89</sup> The modes of production in their turn give you the key to everything else, call it poetry, call it religion, or what have you.

But for Montesquieu man is still, although he doesn’t emphasize it, the rational animal.<sup>90</sup> Therefore the first man, so to speak, who has to look around for getting his food and shelter also could not help thinking about the whole to which he belongs. Well of course He does it to begin with in a ridiculous manner and may even believe like this fellow and the emperor of Japan who had similar imaginations that he is the son or daughter of the sun or the moon, whatever the case may be. But this cannot be deduced from the mode of production. It is an independent fact. It may even have an effect *on* the mode of production.

Now this remarkable sentence here—“The prejudices of superstition are superior to all other prejudices, and its reasons [namely the reasons given by superstition] are superior to all other reasons”—this reminds us of an earlier passage in Book XVI, chapter 2, second paragraph before the end.

**Mr. Reinken:** “Human reasons are subordinate—”

**LS:** “always”

**Mr. Reinken:** “—always to that Supreme Cause who does whatever He pleases, and uses everything which it wills.”<sup>xvi</sup>

**LS:**<sup>91</sup> There is a difficulty here because the reasons of superstition are<sup>92</sup> also human reasons. And here reasons of superstition are said to be superior to all other reasons,

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 18, 279.

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. XVI, ch. 2, 252.

meaning override them, but that cannot be the case according to the passage in Book XVI, chapter 2, which we just read.<sup>93</sup> I suppose that Montesquieu would admit that the reasons of superstition cannot really supersede completely such natural reasons as, say, the difference of the sexes for example.

But still for practical purposes they could do it by simply declaring this particular tribe or section consists only of men, and that particular tribe consists only of women, and then they have to manage, to see how they can reconcile this to nature. But the legal fiction would still be what the superstition holds. I think one has to hold these two passages together.

In chapter 20 he speaks of the international law of the Tartars and tells us terrible stories, which are no longer so terrible<sup>94</sup> to our twentieth century ears because we read these things every day in the newspapers—why they kill the inhabitants of any city they conquer. Read the second paragraph only.

**Mr. Reinken:** “They have destroyed Asia, from India even to the Mediterranean; and all the country which forms the east of Persia they have rendered a desert.

The law of nations is owing, I think, to the following cause. These people having no towns, all their wars are carried on with eagerness and impetuosity. They fight whenever they hope to conquer; and when they have no such hope, they join the stronger army. With such customs, it is contrary to the law of nations that a city incapable of repelling their attack should stop their progress. They regard not cities as an association of inhabitants, but as places made to bid defiance to their power. They besiege them without military skill, and expose themselves greatly in the attack; and therefore, revenge themselves on all those who have spilled their blood.”<sup>xvii</sup>

**LS:** Of course Montesquieu doesn’t like this kind of international law. That goes without saying. But the interesting point is that he doesn’t say here a word of condemnation. And the reason is these fellows do not know better. They *cannot* know better.<sup>95</sup> And therefore it is as unreasonable to blame them as it would be to blame a tiger for snatching a child. Now this has to do with the fundamental issue of natural law in the following manner. Perhaps later on we will have an occasion to discuss it, but not now.

That has to do with one crucial implication of the traditional doctrine of natural law. According to this, natural law cannot be a natural law, cannot be binding, if it is not properly promulgated. And of course<sup>96</sup> the strict Thomistic doctrine is that it is<sup>97</sup> promulgated [to all men] at least in its principles in the conscience. But this<sup>98</sup>, if I may say so, can empirically not be checked, because these people in fact have no inkling of that. And therefore they cannot be justly blamed for their cruel behavior, which doesn’t mean that one should not do something against this if one is confronted with them. That is of course an entirely different question.

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<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. XVIII, ch. 20, 280–81.

Well we cannot go into this question of the law Salic . . . of the French kings, their marriages and so on.<sup>99</sup> Chapter 30, when he speaks of the assemblies of the nations, of the Franks, this must be read together with the chapter on the English constitution in Book XI, the Teutonic origins of the parliament, we could say. The book ends with a rather nasty attack on the clergy, chapter 31, where he traces the power of the Christian clergy in the Frankish government to the power the pagan clergy had in pagan France, in the pagan Frankish kingdom. Did you want to say something?

**Mr. Reinken:** Chapter 25 struck me particularly when he spoke on vice not being a subject of ridicule—

**LS:** Amongst the Germans.

**Mr. Reinken:** Amongst the Germans. Cannot but have thought of the style of Versailles.

**LS:** Oh ya, sure<sup>100</sup>. No, no, Tacitus praises the Germans, and the background had something in common with the background of the Roman Empire, though the French kings were not comparable to the greatest beasts among the Roman emperors. Mr. Bruell?

**Mr. Bruell:**<sup>101</sup> Chapter [18] on superstition treated the superstition of the savages of Louisiana as an exception, or used the superstition to explain an exception to the general state of liberty among savages. But<sup>102</sup> I wondered in connection with the passage I mentioned in chapter 13 about the old men who remember what happened in the past, and also this last sentence—

**LS:** In chapter 18?

**Mr. Bruell:** No, in the whole book, in chapter 31, where the theme of religion at least is returned to again. My point is Montesquieu doesn't say explicitly whether superstition is the natural case among savages, or not. And if it is the natural case, that would reflect upon how free they<sup>103</sup> actually are.

**LS:** That's a point which we have not considered. That is very important. Now what would you say?

**Mr. Bruell:** It seems to me that he implies that, although the other conditions are favorable to their freedom, in fact wherever there are primitive people there are superstitions. So in fact they're not free.

**LS:** In other words, the key minor premise of your argument, which you ascribe to Montesquieu—primitive people, if I may use this loose word, are necessarily superstitious. I believe you are right. That would agree with his general posture. Yes, that is true. So, in other words, you can have a kind of great easygoingness there, because you can escape so easily from the authority of the chief and of the leading men.<sup>104</sup>

[Another teacher wants the room]<sup>105</sup>

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<sup>1</sup> Changed from "Well, this is of course."

<sup>2</sup> Moved "Salic."

<sup>3</sup> Deleted "yes."

<sup>4</sup> Deleted "Now."

<sup>5</sup> Deleted "no less than."

<sup>6</sup> Deleted "that."

<sup>7</sup> Deleted "it."

<sup>8</sup> Deleted "Student: I'm sorry, I would have [inaudible], but there wasn't time."

<sup>9</sup> Deleted "The soil, alright."

<sup>10</sup> Deleted "Good. Now."

<sup>11</sup> Deleted "very important of course."

<sup>12</sup> Deleted "Now."

<sup>13</sup> Deleted "Well."

<sup>14</sup> Deleted "the;" moved "women."

<sup>15</sup> Deleted "Well."

<sup>16</sup> Deleted "But."

<sup>17</sup> Deleted "of course."

<sup>18</sup> Deleted "concerns."

<sup>19</sup> Deleted "And."

<sup>20</sup> Deleted "of course."

<sup>21</sup> Deleted "that."

<sup>22</sup> Deleted "of course."

<sup>23</sup> Deleted "Student: I didn't hear some of what you said, so I didn't understand it."

<sup>24</sup> Deleted "Your laughing implies that this needs restating by me?"

Student: No.

LS: No, all right. I'm not averse to being criticized. Good. But then."

<sup>25</sup> Deleted "And."

<sup>26</sup> Deleted "Is this not clear? Good."

<sup>27</sup> Deleted "in other words."

<sup>28</sup> Deleted "I mean."

<sup>29</sup> Deleted "but."

<sup>30</sup> Deleted "living."

<sup>31</sup> Deleted "is."

<sup>32</sup> Deleted "I mean."

<sup>33</sup> Deleted "Now."

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- <sup>34</sup> Deleted “an answer.”
- <sup>35</sup> Deleted “it’s much closer to ... let’s put it this way.”
- <sup>36</sup> Deleted “And.”
- <sup>37</sup> Deleted “So.”
- <sup>38</sup> Deleted “and.”
- <sup>39</sup> Deleted “What.”
- <sup>40</sup> Deleted “And.”
- <sup>41</sup> Deleted “I think.”
- <sup>42</sup> Deleted “we all know that, that.”
- <sup>43</sup> Deleted “of course.”
- <sup>44</sup> Deleted “but.”
- <sup>45</sup> Deleted “And.”
- <sup>46</sup> Deleted “And.”
- <sup>47</sup> Deleted “Well.”
- <sup>48</sup> Deleted “Well.”
- <sup>49</sup> Deleted “All right.”
- <sup>50</sup> Deleted “I.”
- <sup>51</sup> Deleted “now because.”
- <sup>52</sup> Deleted “speaks of.”
- <sup>53</sup> Deleted “And.”
- <sup>54</sup> Deleted “of course.”
- <sup>55</sup> Deleted “And.”
- <sup>56</sup> Deleted “Now let us see.”
- <sup>57</sup> Deleted “and.”
- <sup>58</sup> Deleted “Student: ‘—made by man. And it is the inexpressible fertility.’
- LS: We don’t need that particularly.”
- <sup>59</sup> Deleted “They were made....”
- <sup>60</sup> Deleted “And therefore.”
- <sup>61</sup> Deleted “And.”
- <sup>62</sup> Deleted “And in a naturally sterile country ... So, good.”
- <sup>63</sup> Deleted “man or.”
- <sup>64</sup> Deleted “of course.”
- <sup>65</sup> Deleted “in.”
- <sup>66</sup> Deleted “Now.”
- <sup>67</sup> Deleted “And.”
- <sup>68</sup> Deleted “Well.”

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<sup>69</sup> Deleted “Yes, now we cannot read everything. Was there anyone whom I prevented from speaking by not remembering him having raised his hand?”

<sup>70</sup> Deleted “I simply want to say.”

<sup>71</sup> Deleted “he doesn’t make....”

<sup>72</sup> Deleted “Well.”

<sup>73</sup> Deleted “Well.”

<sup>74</sup> Deleted “than [inaudible].”

<sup>75</sup> Deleted “that.”

<sup>76</sup> Deleted “What do we make of it?”

<sup>77</sup> Deleted “of course.”

<sup>78</sup> Deleted “I believe that.”

<sup>79</sup> Deleted “Well.”

<sup>80</sup> Deleted “I mean.”

<sup>81</sup> Deleted “to.”

<sup>82</sup> Deleted “whether that has any meaning.”

<sup>83</sup> Deleted “Student: ‘of wants.’”

LS: No, not ‘a sense of,’ just “wants.”

<sup>84</sup> Deleted “in other words.”

<sup>85</sup> Deleted “and.”

<sup>86</sup> Deleted “Yes, this would seem to show a way of how to reconcile ....”

<sup>87</sup> Deleted “Someone of you brought it to our attention. Yes?”

<sup>88</sup> Deleted “Good.”

<sup>89</sup> Deleted “And.”

<sup>90</sup> Deleted “And.”

<sup>91</sup> Deleted “Now.”

<sup>92</sup> Deleted “of course.”

<sup>93</sup> Deleted “Now.”

<sup>94</sup> Deleted “in.”

<sup>95</sup> Deleted “I.”

<sup>96</sup> Deleted “it is.”

<sup>97</sup> Moved “to all men.”

<sup>98</sup> Deleted “is.”

<sup>99</sup> Deleted “Let me see.”

<sup>100</sup> Deleted “sure.”

<sup>101</sup> Deleted “The.”

<sup>102</sup> Deleted ‘I wondered whether...

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LS: Which chapter is that?

Student: Chapter 18.”

<sup>103</sup> Deleted “are.”

<sup>104</sup> Deleted “Now we have....”

<sup>105</sup> Deleted “LS: We leave at once.”

**Session 16: February 24, 1966**

**Leo Strauss:** That was a fine paper. Let me take up a few points. You seem to imply that the British as Montesquieu sees them are free from all defects, not from vices, but from defects. You understand?

**Student:** I have a problem with that. There is a difference between, when Montesquieu is talking about England and names it he may be talking about the approximation of what he thinks is the best regime, and when he's not naming it he may be generalizing it.

**LS:** But still, it is so clearly empirical, these chapters. For example, when he speaks without mentioning the name that there is a neighboring island subjugated by the large island—what else could it mean? But you seem to suggest that the British are free from defects. I think that is not true. There is a certain criticism, politically perhaps not important, but important in other respects. The end when he speaks of the British inferiority in taste, what is the standard by which he measures England there? Where would he have found taste?

**Student:** France.

**LS:** Sure. To whom does he compare the French nation, to which other nation in this very book?

**Student:** Athens?

**LS:** Athens, sure. So, in other words, England is not Athens. France is much closer.<sup>1</sup> Montesquieu is sufficiently close to French classical taste to accept the English poets. And this has<sup>2</sup> something to do with the position of women in England as he sees it, a strictly male society in clubs and so on compared with the drawing rooms in France. This is a relatively minor thing. You stated to begin with that chapter 19 is the link between the chapters devoted to climate and other natural conditions and commerce. This is safe to say. But whether that is sufficient is another matter.

**Student:** To get into that I thought would take too much time, but there are, it seems to me, two possibilities. Since we haven't looked at the chapters on commerce supposedly yet, it is hard to say. But it seems to me that this is an absolutely crucial link between the sort of conditions he describes man under—the conditions he finds himself in by nature—and this going away from nature to the position of the commercial republic where they in a sense overcome the difficulties of nature. For example, they can trade and are not limited to the products of their land and things like that. And also it has to do with going from the state of savagery in a very general sense to a state of high civilization.

**LS:**<sup>3</sup> The difficulty which I have I would state as follows: Chapter 19 speaks of the general spirit into which all ingredients enter, of course also commerce.<sup>4</sup> This should find



its place at the end of the book after he has discussed the individual factors like commerce, climate, etc.<sup>5</sup> Therefore there is a difficulty here.

**Student:** But might not successful commerce require an attitude of mind which would have to precede it?

**LS:** And certain political conditions also, yes that is true. Still, let us leave that open. You pointed out properly the influence of Mandeville on Montesquieu. And that means<sup>6</sup> not only Mandeville—Mandeville is only a particularly notorious writer.<sup>7</sup> The fundamental thought can be traced surely to Machiavelli and to some men in between.<sup>8</sup>

When people speak today of Montesquieu's sociological intention, as distinguished from his being a political philosopher, they say in a polite way of course the same thing. But the trouble is that they say it too politely, because sociology, being an academic discipline, is perfectly decent and there is nothing fishy about it. But if one would speak of private vice, public benefit, then you would have raised quite a problem. Or differently stated, the problem is this: Montesquieu spoke very much of virtue, and virtue loses more and more its central position as the standard in favor of freedom. This event is not limited to Montesquieu, but it is probably the most striking document of this very great change which has taken place in modern times that freedom takes the place of virtue.<sup>9</sup> That would require a very close and severe analysis to make it clear, but I believe the mere formula is suggestive enough.

The key word, virtue, that there is something, a standard to which man has to assimilate himself, a standard independent of man; and on the other hand that *the* good thing is something which originates in man. In our age someone has taken the passage from the New Testament, "The truth will make us free," and has said, "Freedom will make you true." This is only another formulation of the same thing. This was Heidegger by the way.

You noted in the list which he gives near the beginning that reason was not mentioned. That was very good of you to observe it. You also noted that there is no example of a people ruled by religion. And finally you pointed out that there is a certain kinship between Montesquieu's remarks about the man and citizen and the Aristotelian distinction between the good man and the good citizen. You were not deceived into assuming that they are identical. Thank you very much. So now let us turn to our text, Book XIX.

The term "*esprit général*," general spirit, was used already by Montesquieu in his *Considerations on the Causes of the Greatness of the Romans and their Decadence*. I don't believe it was ever used in the *Persian Letters*. Near the end of that book, two pages from the end, he says, "There is in every nation a general spirit on which the very power [meaning the political power] is founded. When political power shocks that spirit, that power shocks itself and is necessarily stopped."<sup>i</sup>

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<sup>i</sup> Edition unknown.

I do not know whether the term occurs before. Nothing is easier than to consult the Littré, the French equivalent to Murray's English dictionary. Today the usual word is "national character."<sup>10</sup> There are two different views regarding the national character. According to one it is a resultant of a variety of factors—that is<sup>11</sup> Montesquieu's view. The alternative view is that represented by Hegel above all, according to which the national spirit is a genuine whole, [a] *volksgeist*, spirit of a nation, which cannot be understood as a mere resultant of a variety of factors. But precisely because it is a resultant of a variety of factors, its discussion should follow the discussion of all these factors taken by themselves.<sup>12</sup> Commerce and religion are clearly factors influencing the national character, in Books XX-XVI, and the question is why. Perhaps we can find an answer while discussing Book XIX. Now let us read<sup>13</sup> the first chapter.

**Mr. Reinken:** "'Of the Subject of this Book.'

"This subject is very extensive. In that crowd of ideas which presents itself to my mind, I shall be more attentive to the order of things than to the things themselves. I shall be obliged to wander to the right and to the left—"

**LS:** No, "to push aside to the right and left."

**Mr. Reinken:** "—to shove aside to right and left in order that I may investigate and discover the truth."<sup>ii</sup>

**LS:** No, "*que je perce*," that I pierce through; and "*que je me fasse jour*." How would you translate it? Yes, "get light for myself." Now this is of course a very strange chapter and any one of you who would begin his doctor's dissertation, or even his later publications, in any way like this would be ruined for the rest of his days. Here is a gentleman of the old regime who writes like a gentleman, with great sovereignty<sup>14</sup>—he can afford it. Now he is confronted obviously with a great disorder, and his primary concern is with establishing order. This much we see. But this is not clear enough. Which order is he speaking of, the natural order of the things or the order most appropriate to the understanding of the audience? Does he mean the order according to nature, or the order with regard to us, to use an Aristotelian distinction? This he does not tell us. Now the heading of chapter 2:

**Mr. Reinken:** "That it is necessary People's Minds should be prepared for the Reception of the best Laws."

**LS:**<sup>15</sup> This book seems to be more openly devoted to teaching legislators than any earlier book, or much less "sociological." He is concerned therefore here with the limits of legislation. In the course of the chapter he says among other things that liberty itself is seen to be unbearable to peoples which were not accustomed to enjoy it. And after having given an example from the neighborhood of Vietnam, he says, who is the legislator who could propose popular government to such people, meaning because they are wholly

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<sup>ii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 1, 292.

unprepared. I did not make this remark with a view to present day discussions.<sup>16</sup> Now let us read the first paragraph of chapter 3.

**Mr. Reinken:** “There are two sorts of tyranny: one real, which arises from oppression—”

**LS:** “Which consists in the violence of the government.”

**Mr. Reinken:** “—which consists in the violence of the government; the other is seated in opinion, and is sure to be left whenever those who govern establish things shocking to the existing ideas of a nation.”

**LS:** Yes, so in other words,<sup>17</sup> he is<sup>18</sup> concerned now with the latter, with the tyranny of opinion, and the implication is that it is necessary for the legislator to respect the opinions, regardless of whether the opinions are good or bad, true or false; but a certain respect is absolutely necessary if he wants to be effective. Now let us read the next paragraph.

**Mr. Reinken:** “Dio tells us that Augustus was desirous of being called Romulus; but having been informed that the people feared that he would cause himself to be crowned king, he changed his design. The old Romans were averse to a king, because they could not suffer any man to enjoy such power; these would not have a king, because they could not bear his manners.”

**LS:** Yes, the later Romans, at the time of Augustus.

**Mr. Reinken:** “For though Caesar, the Triumvirs, and Augustus were really invested with regal power, they had preserved all the outward appearance of equality, while their private lives were a kind of contrast to the pomp and luxury of foreign monarchs; so that when the Romans were resolved to have no king, this only signified that they would preserve their customs, and not imitate those of the African and Eastern nations.”<sup>iii</sup>

**LS:** Of Africa and the Orient. So the Romans of Augustus’ time we learn here are anti-oriental and of course anti-African—but anti-oriental is more interesting. I add one word, still anti-oriental. But, as he makes clear in the next paragraph, they had already lost all public spirit—the spirit of a free people. In other words, what Montesquieu doesn’t say here [is that] they were ripe for oriental despotism without knowing it. And that happened in the following centuries. If you would read the last chapters of his *Considerations on the Causes of the Greatness of the Romans* you would see that this is in accordance with Montesquieu’s thought throughout.<sup>19</sup> Only after these preparations in chapters 2 and [3] does Montesquieu turn to the explicit discussion of general spirit, and he defines it first in the first paragraph of chapter 4.<sup>20</sup>

**Mr. Reinken:** “Many things govern men: the climate, religion, laws, the maxims of government, the examples of things which have passed, the morals, the manners; whence is formed a general spirit of nations.”

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 3, 293.

**LS:**<sup>21</sup> The general spirit is a resultant, one could say, from preceding factors. Now this order is very strange. Reason of course,<sup>22</sup> [or] philosophy, are completely absent, science, for reasons which were properly stated by Mr. Hunter. But the central ones are the maxims of government. Why do they occupy the central place? That is hard to see. Let us read the next paragraph. It is short.

**Mr. Reinken:** “In proportion as, in every country, any one of these causes acts with more force, the others in the same degree are weakened. Nature and the climate rule almost alone over the savages; customs govern the Chinese; the laws tyrannize in Japan; morals had formerly all their influence at Sparta; maxims of government, and the ancient simplicity of manners, once prevailed at Rome.”<sup>iv</sup>

**LS:** So maxims of government are linked up with Rome; and we have seen something of the importance of Rome in the preceding chapter, because Rome became the commonwealth, the empire, within which Christianity emerged and within which Christianity was then transmitted. Now he does not mention a single nation in which religion rules. He replaces religion by nature, because nature had not been mentioned before, and he says here nature and climate dominate almost alone the savages. Why does he say “almost alone?”

**Student:**<sup>23</sup> We’ve seen some cases where savage people were dominated by their superstitions.

**LS:** Yes,<sup>24</sup> that is surely the most important point. Only among savages, one can say, is nature predominant according to Montesquieu. This is of course in no way surprising if one knows a bit of the thought preceding Montesquieu. When people spoke in the seventeenth and eighteenth centuries of the state of nature, many people meant it is something like the state in which savages live. So, state of nature, state of savagery. Therefore, this is not very surprising.

He doesn’t give an example of a nation in which religion is predominant. Well, he doesn’t give a single example of a Christian or Moslem nation. These are all pagans, as you can easily see.<sup>25</sup>

The heading of chapter 5 shows that he returns again to the practical question, namely to what the legislator is to do. The example now is the French, not mentioned by name, and without an allusion even to their religion. Obviously he likes the French national character, their vivacity, even their element of levity, and he enjoys that. They are naturally gay, he says here. Let us read the third paragraph.

**Mr. Reinken:** “It is the business of the legislature to follow the spirit of the nation, when it is not contrary to the principles of government; for we do nothing so well as when we act with freedom, and follow the bent of our natural genius.”<sup>v</sup>

<sup>iv</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 4, 293–94.

<sup>v</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 5, 294.

**LS:** So freedom means then freedom for our nature, for our “*génie naturel*,” for our natural genius. There is a note of the editor here which is helpful for our purposes. He says one qualification: The legislator must not act contrary to the principles of the government. So in France, for example, he shouldn’t do any harm to that natural gaiety and vivacity of the nation. But of course when the monarchy, the French monarchy, is at stake then the French monarchy has the right of way and not the natural gaiety. “An important reservation,” he [the editor] says, “although Montesquieu doesn’t insist on it, of capital importance given that for him the principles of government are the primary source, the principle source, of laws. But could one not object to him that the constitution of the state must itself be in conformity to the genius of the nation? He admits that the mode of government must be adapted to the greatness of the territory, of the climate, etc. Why not also to the general spirit of the nation?”<sup>vi</sup> This is a serious difficulty. What do you say? How can one save Montesquieu from this criticism, if he deserves to be saved?

**Student:** This is his own country. That might be a little dangerous.

**LS:** Yes, that is true. His caution has always to be considered. But a more specific point. He speaks here of what the legislator would do. Now who is the legislator in a monarchy, like the French?

**Student:** Louis.

**LS:** The French king. Now can any legislator be expected to abdicate? Obviously not, and therefore the position of the sovereign is surely exempt from anything which the legislator can in reason be expected to do. Yes?

**Mr. Reinken:** You gave at an earlier time some conservative considerations. Government being the more important thing, but a fitting government very desirable, when you have a badly fitting government it’s more dangerous to make experiments and change. Even if you could say, “oh the perfect one, let’s drop what we’re doing and rush off for the constitution of the year one,” it’s more trouble than it’s worth to get to it. You have to proceed with exceeding care; and hence it’s saying that you cannot depart from the existing government.

**LS:** In other words, what you say is that the teacher of legislators would for this reason have sympathy with the egoism of the sovereign.

**Mr. Reinken:** Because it is the established government.

**LS:** That is all right. Now in the next chapter he continues the argument of chapter 5, and uses here the phrase [in] the second sentence, “nature repairs everything”—one of these statements which in a textbook would be called a typical expression of eighteenth century optimism and rationalism. Well, Montesquieu was not a simpleton, and this is clearly an overstatement. He means nature is stronger than all merely imposed things. And that is

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<sup>vi</sup> Edition unknown.

surely a defensible position.<sup>26</sup> Then there comes the tacit comparison of the French with the Athenians, and one doesn't know of whom with the Spartans, but these Spartans are anyway not as interesting as the Athenians, therefore we don't have to bother about that.

In chapter 8, the footnote, there is explicit reference to Mandeville to which Mr. Hunter has drawn my attention. And let us read now the beginning of chapter 9. Read also the heading.

**Mr. Reinken:** “‘Of the Vanity and Pride of Nations.’

“Vanity is as advantageous to a government as pride is dangerous. To be convinced of this we need only represent, on the one hand, the numberless benefits which result from vanity, as industry, the arts, fashions—”

**LS:** No, luxury first.

**Mr. Reinken:** Luxury?

**LS:** Luxury, yes—we have traveled a long way.

**Mr. Reinken:** “—luxury, industry, the arts, fashions, politeness, and taste; on the other hand, the infinite evils which spring from the pride of certain nations.”<sup>vii</sup>

**LS:** That is all we need. So vanity is infinitely better than pride. That is a very characteristic assertion. Pride is here understood as the desire to be superior; and vanity the desire to please. A vain man is an accommodating man; and a proud man is a man who offends. That is the point. And vanity has some other connection. Read the first note in this chapter.

**Mr. Reinken:** “The people who follow the khan of Malacamber, those of Carnataca and Coromandel [these are all parts of India], are proud and indolent; they consume little because they are miserably poor; while the subjects of the Mogul and the people of Hindostan employ themselves, and enjoy the conveniences of life, like the Europeans.”<sup>viii</sup>

**LS:** Yes, so there is a connection between vanity and the enjoyment of the goods of this world, whereas the proud man can live very miserably—and he gives us all kinds of examples from the Indians, and<sup>27</sup> also from the Spaniards.

**Student:** Mr. Strauss, isn't it that vanity was a defect among the Romans, or the cause of their decline?<sup>28</sup>

**LS:** Sure, but we have learned something. We have learned now that<sup>29</sup> this praise of virtue in the traditional literature is unreasonable. Less virtue and more happiness, you can state it.

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<sup>vii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 9, 295.

<sup>viii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 9, 296.

**Same Student:** But there seems to be a transvaluation of luxury here.

**LS:**<sup>30</sup> Luxury is only one of the items involved. Luxury is rejected of course in the name of virtue. And since virtue is replaced by another standard, luxury is now less bad.

**Same Student:** It's a positive asset.

**LS:** Ya, sure.<sup>31</sup> There is a word which he has not yet used clearly as an alternative to virtue but which will come out in the sequel, not in this book, and that is humanity. One can say human kindness, compassion, and all this kind of thing. This mildness and gentleness, rather than stern and severe virtue, comes to the fore with infinite consequence. And of course the substitution of commerce for war. In commerce even if a man is cheated they are ordinarily not killed or maimed by it as they would necessarily would be in war. You know, this peculiar kind of humanity which has become so important in modern times.

Now there is another implicit<sup>32</sup> point here of which Montesquieu does not speak, an implicit argument in favor of democracy.<sup>33</sup> The key point for the legislator is that he should not act against the inclinations or the genius of the people. But let us assume the sovereign or the legislator is the people. This whole difficulty wouldn't exist. The people would not act against its natural inclination. A proud nobility or a stern monarch might do that, but not the people. That is perhaps a part of the subterranean pro-democratic argument of Montesquieu. In other words, in a democracy the legislator is necessarily wise in this respect. He may be foolish in other respects, but he would not act against<sup>34</sup> the inclinations of the people.

The difficulty arises if you have a people consisting of heterogeneous groups. Say there is one part of the population<sup>35</sup>—not like criminals and non-criminals—which likes to gamble<sup>36</sup> [or] likes to drink; and there is another one which likes not to gamble and not to drink, and to lead a very severe life.<sup>37</sup> If the majority should be against drinking and gambling, they might set up laws which are resented by the heterogeneous groups brought up in a somewhat different posture toward drinking and gambling.<sup>38</sup> Then of course you have this kind of difficulty again on a democratic basis—prohibition and this kind of thing.<sup>39</sup> But if it is a homogenous people, then it is clear there would never be any laws against the genius of the people.

**Student:**<sup>40</sup> That's the case with England though. There are the Scotch, the Presbyterians, who don't like to drink or gamble, and the English [who do]. So there is a certain problem.

**LS:** But England was of course by no means, even according to Montesquieu, an unqualified democracy at that time.

**Student:** I thought you might also be describing the Commonwealth.

**LS:** But to what extent was this a people? That was a part of the people, the part that was particularly adverse to these pleasures. As their enemies said, they love other pleasures.<sup>41</sup> Now let us turn to chapter 11. Read the heading also.

**Mr. Reinken:** “‘A Reflection.’

“I have said nothing here with a view to lessen that infinite distance which must ever be between virtue and vice. God forbid that I should be guilty of such an attempt!”

**LS:** The latter is an addition of our translator. God forbid, period, or exclamation mark.

**Mr. Reinken:** “God forbid! I would only make my readers comprehend that all political vices are not moral vices; and that all moral vices are not political vices; and that those who make laws which shock the general spirit of a nation ought not to be ignorant of this.”<sup>ix</sup>

**LS:** Yes, the example is obvious. Let us assume that gambling<sup>42</sup> or brothels are morally bad things. They may nevertheless have to be tolerated because they may be a source of revenue. God forbid, to use Montesquieu’s own expression [laughter]. As Nero said when he put a tax on, how do you call it, urinariums, *pissoirs*—and the people said how shocking that is to get money from such a source, and he said “*Non olet!*” it doesn’t stink—the money that is [laughter]. That would be another perhaps more harmless example. Yes.

But the key implication here<sup>43</sup> is this: It is not the task of the legislator to make the citizens morally virtuous. That is not even stated, but it is clearly implied. Locke said, however strange it may seem, the law maker has nothing to do with moral virtues and vices, but only with the preservation of property—in the right sense where property also includes life and liberty. Montesquieu here simply draws a crucial conclusion.

**Student:** This brings back a distinction, by using the word “vice,” he brings back the distinction between public virtue and moral virtue—

**LS:** Political virtue.

**Student:** Political virtue. And makes . . . .

**LS:** Yes, surely, but now<sup>44</sup> he writes as if he were still concerned with moral virtue. But that is<sup>45</sup> a question: to what extent is he concerned with this? This editor<sup>46</sup>, who is very good natured I am happy to say, perhaps too good natured for an interpreter of Montesquieu, says: Montesquieu is here perhaps too much a disciple of Mandeville. At any rate, now<sup>47</sup> comes the beautiful conclusion, one sees well that Montesquieu places himself essentially on the sociological point of view. In other words, the moment we have this beautiful title, then we can forget about the unsavory fathers of that discipline like

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<sup>ix</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 11, 297.



Mandeville.<sup>48</sup> Now let us turn to<sup>49</sup> chapter 12. Read the heading and the first two paragraphs.

**Mr. Reinken:** “Of customs and manners in a despotic State.”

**LS:** I believe that he refers only to the despotic states in titles throughout this book. Although one should expect he would have some chapters on republican and monarchic states. Yes.

**Mr. Reinken:** “It is a capital maxim, that the manners and morals of a despotic empire ought never to be changed; for nothing would more speedily produce a revolution. The reason is, that in these states there are no laws, that is, none that can be properly called so; there are only manners and morals; and if you overturn these you overturn all.

“Laws are established, morals are inspired; these proceed from a general spirit, those from a particular institution.”<sup>x</sup>

**LS:** The laws, namely from a certain act of this sultan. Therefore, this is a law. Whereas the manners do not have such a particular institution, and they are to be traced to a general spirit. Yes.

**Mr. Reinken:** “Now it is as dangerous, nay more so, to subvert the general spirit as to change a particular institution.”

**LS:** A particular institution has here the precise meaning [of] an arrangement made by this particular ruler as distinguished from others. But when he spoke of despotism in the earlier books, he did not speak of morals and manners as limiting the arbitrary will of the despot, but of something else.<sup>xi</sup>

**Student:** Religion.

**LS:** Religion. So it is very strange, although he had mentioned religion as one of these seven factors, he doesn’t speak of it here. He gave at that time the example that the sultan could not possibly change the Koranic prohibition against wine drinking, because this has a much greater sacredness in the eyes of the subjects than anything he could say. So what I’m driving at is this<sup>50</sup>: This book does deal with the subject of religion although not explicitly. And the word which he uses here and which he is going to use in the sequel, *morals and manners are inspired*, may very well have reference to it; and also the possible ambiguity of *the general spirit* as distinguished from [a] particular institution. “God knows”—that is an Islamic phrase.

**Student:** Somebody practiced numerology on this book, and they found Holy Spirit and—

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<sup>x</sup>In original: “Laws are established, manners are inspired; these proceed from a general spirit, those from a particular institution.”

<sup>xi</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 12, 297–98.

**LS:** It is difficult. Who did that? I believe it is not feasible because<sup>51</sup> in these books—I don't know whether in Book XIX, but surely in Book XVIII—he wrote quite a few chapters at the last minute after the thing was already at the printer. I don't believe it is advisable to do that. I mean in those books which were completed and never fundamentally changed, it's a different story. But regarding the work as a whole I believe it is not wise to play around with that. Yes?

**Student:** I was trying to resolve the statement he made in Book XII where he said that liberty<sup>52</sup> arose from the manners and customs favored by the law, only favored by the law. Now I took him seriously on that point, and I was hoping to see where he would . . . Now here he says this is true even in despotisms, that manners couldn't have a predominance over legal factors. But it seems he's not going to follow through with this in republics or monarchies.

**LS:** But apparently in moderate government, as he calls it, the position of the legislator<sup>53</sup>, the position of laws,<sup>54</sup> is better because, differently stated, in a moderate government the legislator can change the morals and manners. In a despotic state he cannot do it.

**Same Student:**<sup>55</sup> This is logical enough, but it seems that his method is<sup>56</sup> to make a point at a particular time, to make a blanket statement, or a forceful statement, like manners and laws give rise to liberty, and then he'll change his statement when it comes—

**LS:** Well sure because the moment you become aware of the fact that manners and morals may also mean religion, you see already that there is a deep ambiguity there, and you will be more cautious than simply asserting he contradicts himself because the terms may have changed their meaning in the meantime, in the transition from the one passage to the other. Now let us move to chapter 14. Read the heading first.

**Mr. Reinken:** “What are the Natural Means of Changing the Manners and Customs of a Nation.”

**LS:** The *natural* means. Yes, begin.

**Mr. Reinken:** “We have said that the laws were the particular and precise institutions of a legislator, and manners and customs the institutions of a nation in general. Hence it follows that when these manners and customs are to be changed, it ought not to be done by laws; this would have too much the air of tyranny: it would be better to change them by introducing other manners and other customs.”

**LS:** Skip the next paragraph.

**Mr. Reinken:** “The law which obliged the Muscovites to cut off their beards and to shorten their clothes, and the rigor with which Peter I made them crop, even to their knees, the long cloaks of those who entered into the cities, were instances of tyranny.

There are means that may be made use of to prevent crimes; these are punishments: there are those for changing our customs; these are examples.”

**LS:** Yes, that is a theme which he will take up later on in the last books when he takes up the whole question of **how to change reasonably** and with special regard to the French monarchy at this time. This chapter prepares this later discussion. Now at the end of the fourth paragraph before the end he makes one of these sweeping statements: “The empire of climate—”

**Mr. Reinken:** “—is the first, the most powerful, of all empires. He had then no occasion for laws to change the manners and customs of his country; it would have been sufficient to have introduced other manners and customs.”

**LS:** To “inspire,”<sup>57</sup> that’s the word which he uses all the time when he speaks of manners and morals.

**Mr. Reinken:** “—to inspire other manners and customs Nations are in general very tenacious of their customs; to take them away by violence is to render them unhappy: we should not therefore change them, but engage the people to make the change themselves.

“All punishment which is not derived from necessity is tyrannical. The law is not a mere act of power; things in their own nature indifferent are not within its province.”<sup>xii</sup>

**LS:** Now the question is, what are the things which are indifferent by their nature?<sup>58</sup> [W]e know already from an implication of an earlier statement that morality proper does not belong to the province of the law.

**Student:** There is a problem, however, when he says that the laws have to do with the actions of the citizen. If it is the case that there may be some moral activities of the citizen which are necessary and needful,<sup>59</sup> as political requirements, then do they become within the province of the law?

**LS:** In other words there might be some<sup>60</sup> [overlap]—sure, say, a provision against murder for example. Sure, there may be more things. But<sup>61</sup> you can also say these are trivial things. I mean no one of any political importance at any time would question the necessity of doing something against murder, or against similar things. That is not a political issue. For example, think of marriage laws,<sup>62</sup> divorce, and this kind of thing. Then you have immediately something where there might be a conflict between morality and what the genius of a people at a given time will be willing to accept. We come to that in the next chapter, chapter 16, in the first two paragraphs. Yes.

**Mr. Reinken:** “How some Legislators have Confounded the Principles which Govern Mankind.”

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<sup>xii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 14, 299.

**LS:** We must keep these things separate, and the most interesting case of course is that religion is not the business of the legislator proper. This is the most interesting case, but also the difference between morals<sup>63</sup>, manners, on the one hand, and laws on the other.

**Mr. Reinken:** “Manners and customs are those habits which are not established by legislators, either because they were not able or were not willing to establish them.

“There is this difference between laws and manners, that the laws are most adapted to regulate the actions of the subject—”

**LS:** The citizen. I mean he is . . . and would therefore not speak of citizens at that time. They were all his majesty’s subjects. Only in our generation, since our generation are the British citizens and no longer subjects. Yes.

**Mr. Reinken:** “—actions of the citizen, and manners to regulate the actions of the man. There is this difference between manners and customs, that the former principally relate to the interior conduct, the latter to the exterior.”<sup>xiii</sup>

**LS:** That is relatively clear. Law regulates only the external actions of men in so far as they can hurt other men. That is a very narrow but preponderant view in modern times. This seems to show that manners and morals include religion, at least religious beliefs. They regulate the *inner* conduct of man. Yes. Mr. Leonard?

**Mr. Leonard:** I was bothered by that translation in that he implied that there was an absolute relationship. Whereas, I thought that in the French it was stated that it was more—<sup>64</sup>

**LS:** Yes, that is correct. You add “rather” in most cases. Yes, that is true.

**Mr. Reinken:** Also, Nugent may have loused it up for you. He is saying it’s “*moeurs*” which is usually translated “customs” by Nugent which go to the interior, and manners to the exterior.

**LS:** Yes, *moeurs* should be, the nearest English equivalent at least etymologically would be “morals.” But as I learned the hard way when I immigrated to this country,<sup>65</sup> morals refers in this country it seems only to sex, and all other morality is ethics. So you can be an unethical businessman, but not an immoral one. You could conceivably also be immoral for other reasons, in other respects. But I would still translate it by “morals,” perhaps with a footnote for American readers that it doesn’t have the present narrow meaning.<sup>66</sup>

Now let us read the end of this very chapter.

**Mr. Reinken:** “Lycurgus, whose institutions were severe, had no regard to civility in forming the external behavior, he had a view to that warlike spirit with which he would

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<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 16, 300.

fain inspire his people. A people who were in a continual state of discipline and instruction, and who were—”

**LS:** “always correcting or always corrected, who always instructed and who were always instructed, equally simple and rigid, exercised among themselves the virtues rather than that they had regards.”<sup>xiv</sup> How does he translate *égards*? Consideration?

**Mr. Reinken:** “Complaisance.”

**LS:** Yes, complaisance. That is an indication of what Montesquieu is driving at, less virtue and more human kindness so to say. Well he could have used other examples, but Sparta was a very innocent example to use here. The Puritans would of course also be a good example, people constantly correcting one another and being corrected all the time. Yes.

He speaks of China in the sequel, and in this context he makes a strong plea for Christianity in chapter 18, which we should read lest we get a lopsided view of Montesquieu’s view.

**Mr. Reinken:**<sup>67</sup> “There still follows hence a very unhappy consequence, which is, that it is almost impossible for Christianity ever to be established in China.”

**LS:** Why does he say “almost?”

**Student:** . . . .

**LS:** I believe for an orthodox reason: the working of divine grace can never be excluded. That’s, I think, the more natural thing. Yes.

**Mr. Reinken:** “The vows of virginity, the assembling of women in churches, their necessary communication with the ministers of religion, their participation in the sacraments, auricular confession, extreme unction, the marriage of only one wife—all these overturn the manners and customs of the country, and with the same blow strike at their religion and laws.

“The Christian religion, by the establishment of charity, by a public worship, by a participation of the same sacraments, seems to demand that all should be united; while the rites of China seem to ordain that all should be separated.

“And as we have seen that this separation depends, in general, on the spirit of despotism, this will show us the reason why monarchies, and indeed all moderate governments, are more consistent with the Christian religion.”<sup>xv</sup>

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<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 16, 301. Strauss’s own translation.

<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 18, 302.

**LS:** So this is not irrelevant for chapter 27. After all, England is a Christian country. And he doesn't speak of Christianity explicitly at all in that chapter, if I'm not mistaken.

**Student:** Except Catholicism, he does raise the question of Catholicism.

**LS:** Does he even use the word "Catholicism?"

**Same Student:** No, but we know from a reference in Book XV, chapter 4, in a footnote, that that's what he's—

**LS:** Obviously, that is clear, but I think he doesn't use any proper names. In chapter 19 he gives an analysis of the Chinese order which he had not done before. We could perhaps read the first paragraph.

**Mr. Reinken:** "The principal object of government which the Chinese legislators had in view was the peace and tranquility of the empire; and subordination appeared to them as the most proper means to maintain it. Filled with this idea, they believed it their duty to inspire a respect for parents, and therefore exerted all their power to effect it."

**LS:** He says "for fathers."

**Mr. Reinken:** "They established an infinite number of rites and ceremonies to do them honor when living, and after their death. It was impossible for them to pay such honors to deceased fathers without being led to reverence the living. The ceremonies at the death of a father—"

**LS:** So in other words, the motive was primarily the concern for the dead rather than with the living. Yes.

**Mr. Reinken:** "— The ceremonies at the death of a father were more nearly related to religion; those for a living father had a greater relation to the laws, manners, and customs: however, these were only parts of the same code; but this code was very extensive."<sup>xvi</sup>

**LS:** So in China at any rate religion is crucial for the general spirit of the nation. In the last paragraph of the same chapter he uses another more powerful term for describing the spirit of the Chinese order, in the middle of that paragraph:

**Mr. Reinken:** "If you diminish the paternal authority, or even if you retrench the ceremonies which express your respect for it, you weaken the reverence due to magistrates, who are considered as fathers; nor would the magistrates have the same care of the people, whom they ought to look upon as their children; and that tender relation—"

**LS:** No,<sup>68</sup> "this relation of love."

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<sup>xvi</sup> In original: "The ceremonies at the death of a father were more nearly related to religion; those for a living parent had a greater relation to the laws, manners, and customs: however, these were only parts of the same code; but this code was very extensive."

**Mr. Reinken:** “—and this relation of love which subsists between the prince and his subjects would insensibly be lost.”

**LS:** Yes, so that is then the spirit of the Chinese order if you take it at its highest—a relation of love between the prince and his subjects, and of course also the intermediate powers between the prince and the simple subjects. And the question is, is a community, and especially a community of such size, which attempts to be regulated by love, by having love as its highest principle—is this a political community, is it a feasible community? Now we see here one thing: the linkup in China between this sublime principle and an infinite variety of detailed rights and ceremonies. He gives an example after the passage which we just read.

**Mr. Reinken:** “Retrench but one of these habits and you overturn the state. It is a thing in itself very indifferent whether the daughter-in-law rises every morning to pay such and such duties to her mother-in-law; but if we consider that these exterior habits incessantly revive an idea necessary to be imprinted on all minds—an idea that forms the ruling spirit of the empire—we shall see that it is necessary that such or such a particular action be performed.”<sup>xvii</sup>

**LS:** In other words, this daughter-in-law may not find any motivations to love her mother-in-law [and] to get up in the morning to do all these little services, but this is the practical consequence of love as the highest principle. The editor here makes this interesting remark, which must have struck some of you too, in connection with this passage on love: “It is then not fear which is the principle of this Chinese government although it is despotic.”<sup>xviii</sup> Montesquieu seems to contradict himself. How can you resolve that contradiction? The principle of the Chinese order is love. If you ask the Chinese themselves what is it that keeps you together, they say love, and Montesquieu had said earlier<sup>69</sup> it is fear.

**Mr. Bruell:**<sup>70</sup> The love has to be supported by that fear. Otherwise in practice it won’t be effective in bringing the subjects to do the duties that they have to do.

**LS:** Still, behind it are certain beliefs which the Chinese hold, I mean the basis for that love, for the belief that love can hold the society together.

**Student:** It’s not so much a formal contradiction because in the earlier chapters when he was discussing despotism China was always something of an exception.

**LS:** But still, he also said terrible things.

**Mr. Reinken:** He said at the outset of the chapter that peace and tranquility of the *empire* were the end. In other words, fear of civil tumult led the legislators to set up this loving family of 400 million.

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<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 19, 303–4.

<sup>xviii</sup> Edition unknown.

**LS:** Mr. Mueller?

**Mr. Mueller:** He did say about the emperor that since the Chinese religion has no belief in an afterlife that fear there is not a motive<sup>71</sup>. So if fear is the motive in this despotism, it isn't just the dreaded power of the tyrants. Rather it is just the dreaded power of the tyrants, not supported by religious terror. But at the same time there is love.

**LS:** Yes, that problem remains.

**Student:** Couldn't the problem be resolved in terms of duty, which stems out of the relationship of love, but then becomes a right or a pattern. But it is not based upon fear except in so far as fear of not doing your duty.

**LS:** No, let me state the question with which I think we must be concerned<sup>72</sup>: How would Montesquieu, given his principles, be able to account for biblical, and in particular Christian, morality? There must be some answer to this question in this book. Whether we are able to discern it is another matter. But otherwise his whole doctrine would have a very serious lacuna.

**Student:**<sup>73</sup> Speaking of Moses<sup>74</sup> [and] earlier states where God<sup>75</sup> spoke more directly to men, isn't religious fear, [the] fear of direct punishment by God of the people, as with the Jews, a direct rebuke, and the fear of punishment after life—I was thinking<sup>76</sup> of the fear of God as the beginning of the love of God. But that formula wouldn't work for China.

**LS:**<sup>77</sup> I leave it at that question.

**Mr. Bruell:** Could it have something to do with the idea that love makes the most extreme demands, and expects the most, the expectations not being able to be fulfilled, but the consequence of that is a kind of jealousy and justification—<sup>78</sup>

**LS:**<sup>79</sup> At any rate we can say this. How questionable<sup>80</sup> love as the Chinese principle is appears from the next chapter. Let us only read the first paragraph.

**Mr. Reinken:** “It is very remarkable that the Chinese, whose lives are guided by rites—”

**LS:** And never forget, behind these detailed rites there is a principle of love, what he had said in the preceding paragraph.

**Mr. Reinken:** “—are nevertheless the greatest cheats upon earth.”

**LS:** So, in other words, the love is not all-permeating there. The next sentence:

**Mr. Reinken:** “This appears chiefly in their trade, which, in spite of its natural tendency, has never been able to make them honest.”<sup>xix</sup>

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<sup>xix</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 20, 304.



**LS:** “which has never been able to inspire them with good faith,” again “inspire.”<sup>81</sup> Now let us turn to the next chapter: “How the Laws ought to be relative to the Morals and Manners.” First paragraph.

**Mr. Reinken:** “It is only singular institutions which thus confound laws, manners, and customs—things naturally distinct and separate; but though they are in themselves different, there is nevertheless a great relation between them.”

**LS:** So laws ought to be separated from morals and manners. But even if they are separated, both things are bound to have great influence on one another. This cannot be changed. So let us consider the case of religion, let us take a purely secular code; and where the separation of law and religion is strictly carried through, nevertheless the religion will influence the code, the code proper, and vice versa. Now let us take the next paragraph.

**Mr. Reinken:** “Solon being asked if the laws he had given to the Athenians were the best, he replied, ‘I have given them the best they were able to bear’—a fine expression that ought to be perfectly understood by all legislators! When Divine Wisdom said to the Jews, ‘I have given you precepts which are not good,’ this signified that they had only a relative goodness; which is the sponge that wipes out all the difficulties in the law of Moses.”<sup>xx</sup>

**LS:** This is a quotation from Ezekiel, chapter 20, verse 25, by the way. But what does this paragraph have to do with the preceding paragraph, that these various departments must be strictly separate, and the next point, all laws are necessarily imperfect. What is the connection?

**Student:** Because the customs of the people are such that they couldn’t have the perfect laws.

**Another student:** That’s what I was going to say. The manners and the customs influence the laws in such a way—

**LS:** All laws are imperfect because of their relation to morals and manners. There cannot be a simply good code. That’s clear. And never let us forget that manners and morals also include, or may include, religion.<sup>82</sup> Chapter 23, laws must be relative to the morals; they must follow them. But in following them they must correct them. Previously the emphasis was only on the primacy of morals and manners, and the laws must comply with them. Now in chapter 23, where he says *how* the laws follow the manners, let us read this very brief chapter.

**Mr. Reinken:** “‘How the Laws Follow the Morals.’”

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<sup>xx</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 21, 305.

“At the time when the morals of the Romans were pure, they had no particular law against the embezzlement of the public money. When this crime began to appear, it was thought so infamous, that to be condemned to restore what they had taken was considered as a sufficient disgrace: for a proof of this, see the sentence of L. Scipio.”<sup>xxi</sup>

**LS:** But when the morals of the Romans decayed, then the laws had not to follow that decay, but to try to arrest it<sup>83</sup>, to correct it. Now a few more words. Apart from this long chapter 27 that deals with England, the last chapter is then chapter 26, which in a way concludes Book XIX as chapters 2 and 3 had introduced it. Let us read this chapter 26, only the first part.

**Mr. Reinken:** “‘The same Subject Continued.’

“The law of Theodosius and Valentinian drew the causes of repudiation from the ancient manners and customs of the Romans. It placed in the number of these causes the behavior of the husband who beat his wife in a manner that disgraced the character of a free-born woman. This cause was omitted in the following laws: for their manners, in this respect, had undergone a change, the Eastern customs having banished those of Europe.”

**LS:** You see that is in a way the bond which holds the whole book together, this great change in European manners which became orientalized in the later Roman Empire<sup>84</sup>; how this is connected with the Christianization of Europe is anybody’s guess. Now, only the last bit of this chapter:

**Mr. Reinken:** “We have seen how the laws follow the morals of the people; let us now observe how the morals follow the laws.”<sup>xxii</sup>

**LS:** That is the transition to the chapter on England where Montesquieu starts from the premise that the laws, the political order, is primary, and what are the consequences following from that. But this must be understood of course with a grain of salt. We know already, for example from Book XIV, the chapter on suicide, how important the climate is and how primary the climate is. The empire of the climates is the first of all empires and<sup>85</sup> it has to be considered if one wants to understand the British constitution. That is deeper than the political arrangements.

But Montesquieu uses this facile distinction here for his more superficial premise. The British are the case of a nation formed above all by its laws [and purely political things], and that means also less by its manners and by its religion<sup>86</sup>. The primacy of the climate remains unquestioned. Freedom of the passions is the inevitable consequence as you have stated of the British system, hence also of the party system. And Montesquieu accepts that party system without any qualification. You know, traditionally parties were regarded as a cancer, as a disease of the body politic, but Montesquieu is one of the first who takes them in stride, just as he takes luxury in stride. One could draw up a list of<sup>87</sup> the things regarded as evil by the tradition—usury, luxury, parties—which all have been

<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 23, 305.

<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 26, 307.

rehabilitated, not to say deified, in modern times. That would be a true history of modern morality. There is one point which we might consider.<sup>88</sup> “That the great advantage which this government would have—”

**Mr. Reinken:** “—over the ancient democracies, in which the people had an immediate power: for there when the orators agitated these agitations always had their effect.”<sup>xxiii</sup>

**LS:** Now, that’s all we need. In other words, that is the point which you all know from the *Federalist Papers*, the great superiority of representative government to direct democracy. There is some greater guarantee of reasonableness involved.

I have read somewhere that the remark at the end of the chapter about their poets—their poets have more that original rudeness of invention than a certain delicacy which is supplied by taste; one would find there something which would approach rather the force of Michelangelo than the grace of Raphael—I have heard that he refers here to Milton. Perhaps. I would have thought of Shakespeare, but it could very well be Milton.

And naturally he observes the English shyness, which was already a characteristic in Montesquieu’s time, *mauvaise honte* as he calls it, going together with pride; so it is not simple, unqualified shyness. Unfortunately we cannot go into that. But the main point was understood very well by Mr. Hunter, that this is, on the whole, a picture of the best society that ever was.<sup>89</sup> The sky is too cloudy, [there is] a bit too much fog, [and] you don’t have these advantages which you would have in France, especially the southern part. That is unfortunately true. But apart from that, that’s the real thing. So next time we will discuss Book XX.

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<sup>1</sup> Deleted “So.”

<sup>2</sup> Deleted “of course.”

<sup>3</sup> Deleted “Well.”

<sup>4</sup> Deleted “Now.”

<sup>5</sup> Deleted “etc.”

<sup>6</sup> Deleted “of course.”

<sup>7</sup> Deleted “But.”

<sup>8</sup> Deleted “Now.”

<sup>9</sup> Deleted “of course.”

<sup>10</sup> Deleted “of course. Now.”

<sup>11</sup> Deleted “of course.”

<sup>12</sup> Deleted “Now.”

<sup>13</sup> Deleted “first.”

<sup>14</sup> Deleted “and without....”

<sup>15</sup> Deleted “Yes, now.”

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<sup>xxiii</sup> *Spirit of Laws*, vol. I, 309.

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<sup>16</sup> Deleted “Good.”

<sup>17</sup> Deleted “and.”

<sup>18</sup> Deleted “of course.”

<sup>19</sup> Deleted “Now.”

<sup>20</sup> Deleted “Student: “Mankind are influenced by various causes—”

LS: No.”

<sup>21</sup> Deleted “A general spirit which results from that.”

<sup>22</sup> Deleted “And.”

<sup>23</sup> Deleted “Well.”

<sup>24</sup> Deleted “yes.”

<sup>25</sup> Deleted “Now.”

<sup>26</sup> Deleted “Yes, and.”

<sup>27</sup> Deleted “of course.”

<sup>28</sup> Deleted “[inaudible], luxury....”

<sup>29</sup> Deleted “this, how shall I say it.”

<sup>30</sup> Deleted “Well.”

<sup>31</sup> Deleted “Well.”

<sup>32</sup> Moved “implicit.”

<sup>33</sup> Deleted “Now.”

<sup>34</sup> Deleted “the... the people would not act against.”

<sup>35</sup> Deleted “which likes.”

<sup>36</sup> Deleted “which.”

<sup>37</sup> Deleted “Now.”

<sup>38</sup> Deleted “And.”

<sup>39</sup> Deleted “You know that.”

<sup>40</sup> Deleted “Well.”

<sup>41</sup> Deleted “Good.”

<sup>42</sup> Deleted “and.”

<sup>43</sup> Deleted “of course.”

<sup>44</sup> Deleted “still.”

<sup>45</sup> Deleted “of course.”

<sup>46</sup> Deleted “here.”

<sup>47</sup> Deleted “here.”

<sup>48</sup> Deleted “Good.”

<sup>49</sup> Deleted “Chapter 13, no.”

<sup>50</sup> Deleted “that.”

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<sup>51</sup> Deleted “these chapters were....”

<sup>52</sup> Deleted “came from the manners.”

<sup>53</sup> Deleted “and.”

<sup>54</sup> Deleted “are.”

<sup>55</sup> Deleted “Well.”

<sup>56</sup> Deleted “that.”

<sup>57</sup> Deleted ““to inspire.””

<sup>58</sup> Deleted “Well.”

<sup>59</sup> Deleted “in terms of.”

<sup>60</sup> Deleted “overlapping between.”

<sup>61</sup> Deleted “these are then.”

<sup>62</sup> Deleted “of.”

<sup>63</sup> Deleted “and.

<sup>64</sup> Deleted “LS: Where, in which paragraph?

Student: In that paragraph we just read.”

<sup>65</sup> Deleted “that.”

<sup>66</sup> Deleted “Student: [inaudible] there are good “*moeurs*” and bad “*moeurs*” and “customs” is a very sociological point of view.”

<sup>67</sup> Deleted “Paragraph 2.”

<sup>68</sup> Deleted “no.”

<sup>69</sup> Deleted “no.”

<sup>70</sup> Deleted “Well.”

<sup>71</sup> Deleted “or ... [inaudible].”

<sup>72</sup> Deleted “it is this.”

<sup>73</sup> Deleted “Well.”

<sup>74</sup> Deleted “speaking of.”

<sup>75</sup> Deleted “was, at the time when God.”

<sup>76</sup> Deleted “of course.”

<sup>77</sup> Deleted “Well.”

<sup>78</sup> Deleted “and....”

<sup>79</sup> Deleted “But the question is, that would be.”

<sup>80</sup> Deleted “the.”

<sup>81</sup> Deleted “Good.”

<sup>82</sup> Deleted “In.”

<sup>83</sup> Deleted “and.”

<sup>84</sup> Deleted “and.”

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<sup>85</sup> Deleted “of course.”

<sup>86</sup> Deleted “by;” moved “purely political things.”

<sup>87</sup> Deleted “the evil things.”

<sup>88</sup> Deleted “It’s so hard to find in the text here, on page 29, bottom.”

<sup>89</sup> Deleted “There is—.”

**Session 17: March 1, 1966**

**Leo Strauss:**<sup>1</sup> The question with which you began, namely the place of Book XX within the whole work, is of course absolutely necessary to raise. And you saw that this book has very much to do with physics, although commerce<sup>2</sup> is not [itself] a subject of physics. But there is a word coined in the nineteenth century which would indicate the connection with physics, the term coined by Comte used also by Marx and Bagehot and the others, “social physics.” That surely belongs. You quoted the passage on the empire of the climate as the first of all empires, but you said the empire of the climate is the first and the most powerful of the empires. Is this also in the French? I remember only the “first.”

**Student:** At that point I was only taking Nugent literally.

**LS:** All right, but that would have to be looked up. Now you saw very clearly that the position which Montesquieu had taken in Books III-V is now reversed very clearly and<sup>3</sup> the problem of interpretation is to follow step by step his change of perspective from virtue in the severest sense, so that you could use it<sup>4</sup> [in] Plato’s *Republic*, to something else. How would Montesquieu call this “x” distinguished from virtue?

**Student:** Liberty?

**LS:** Liberty, yes. That is the drama going on in this work. But not one going on behind Montesquieu’s back, as it were, he is fully aware of what he is doing. When you spoke about the legal problems discussed in Book XX, freedom of trade and so on, you saw very well I believe—it was not quite clear to me—that Montesquieu is not in favor of one hundred percent freedom of trade. He has still some qualifications there. But when speaking of the subordination of economics to politics in England—that is correct, he says something—you try to link this up with the broader issue speaking in this connection of self-preservation. I do not remember exactly what you said. Do you know the passage?

**Student:** Yes. Both the result and the justification for such subordination of politics to economics (which the English had done) is the identity of the highest political purpose for Montesquieu, self-preservation, with the interest of other nations. And then I quoted from chapter 8, an indirect substantiation of what I am saying, “It is much more advantageous to trade with a commercial nation,” which has, so to say, “a necessity to be faithful, pacific from principle, and that seeks to gain, not to conquer.”<sup>i</sup> From that I drew that the interest of other nations is to remain at peace with any nation that merely seeks to gain commercially and not to conquer them.

**LS:** Well that would then be one of the qualifications. Those nations that are unable or unwilling to engage in international trade cannot be helped. And this of course has profoundly changed in the meantime. Well, I was quite satisfied with your paper.

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<sup>i</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 8, 321.

**Student** [addressing the student who read the paper]: I have a question. Did you say that<sup>5</sup> [chapter] 23 was not clear to you?<sup>6</sup>

**Student:** Yes, I still don't understand. I don't understand what he means to say with respect to poor nations. The last sentence of the Book, of Book XX, ends by talking about "those that are most in want will find an advantage in putting a stop to all commercial intercourse."<sup>ii</sup> And it doesn't seem to me clear from Book XX whether, granted there may be an advantage to some<sup>7</sup> poor nations not to have commerce, can they successfully put a stop to it given the nature of commerce, the fact that—

**LS:** You mean like the Poles for example?

**Student:** Yes.

**LS:** Or the Japanese.

**Student:** The present situation of the Poles, because the Poles almost correspond to what he's talking about at the beginning of chapter 23.

**LS:** I see, good. But let me return the papers. First to Ms. Freeman. I read to you a passage which is correct but only that lest we forget that: "The laws which would establish Christian virtue would eliminate liberty. They would force men to do what they ought. But they would also restrain commerce because they would restrain ambition. As Montesquieu states in Book XXI, thus we owe to the speculations of the schoolmen all the misfortunes which accompanied the destruction of commerce, and to the avarice of princes the establishment of a practice which puts it in some measure out of their power."

So here the connection between Montesquieu and Machiavelli is quite obvious. And one sees also that this doctrine of commerce which plays no role to speak of in Machiavelli—surely not in his political works—is<sup>8</sup> a sophisticated modification of Machiavelli. The commercial philosophy, if we can speak of that, appeals to what men do, to what men actually desire as distinguished from what they ought to desire. You cannot call an advertisement for a hitherto unused soap an "ought" statement. You ought to use Ajax, [or] whatever they call it. That is clearly not an ought statement proper, though grammatically it could be phrased as an ought statement. Now this question we will have to take up again.

And here is Mr Aichinger's. You quote<sup>9</sup> a passage<sup>10</sup> from Book XIX: "that a happy mixture . . . is formed of virtues and vices, but from a happy mixture of these," meaning virtues and vices. So vices must become ingredients of the happy mixture. That is straight out of Machiavelli. And you quote Mandeville properly. You quote here another passage: "The law is not a mere act of power. Things in their own nature indifferent are not within its province"—the implication being that manners and customs are in their own nature indifferent. That is a harsh statement. But can you state it so that it will not appear offensive?

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<sup>ii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 23, 330.



**Mr. Aichinger:**<sup>11</sup> I felt that they were indifferent by their nature, but not when the question of necessity arises. Then they can be of extreme importance, as in China for example, that if a custom—

**LS:** Yes, that they are in fact in many cases important there is no doubt. But what is Montesquieu driving at? At what is now the predominant view of law? That law should not have anything to do with virtue or vice as such, but only with the regulation of relations between individuals: to use a strict formula of Locke, the protection of property. Nothing else is the business of the law. The abandonment of the concern with virtue is only another aspect of the Machiavellism of this whole kind of doctrine.<sup>12</sup>

There is only one point which I made in a probably illegible way: this commercial republic is the embodiment of individualism. This word is not well chosen, because there is an enormous literature on the individualism of the Stoics, for example, and Montesquieu is at the opposite pole<sup>13</sup> [of] the Stoics. So what does individualism mean? This is too vague an expression which should be expelled from scholarly discussion. Otherwise I was quite satisfied with your paper.<sup>14</sup>

Now here is a note. Who is the writer of this? Mr. Bruell. Now Mr. Bruell draws our attention to the fact that in Book XIX, chapter 21, first paragraph, where he says “only singular institutions confound things naturally separated, the laws, the morals, the manners,” the point which we mentioned<sup>iii</sup>. In other words, non-singular, sensible institutions would not confound them. The basis of that is of course the modern concept of law according to which it is severely limited to the harm or benefits which individuals can do to each other. A simple case is if a man only harms himself without harming others,<sup>15</sup> degrades himself—this is not something which it is the business of the law to prevent. Whereas according to the older view it was<sup>16</sup> very much the business of the law. And of course the most massive field in which this difference between the two conceptions of law shows is sexual morality.

And you [presumably Mr. Bruell] quote from Book IV, chapter 6, “The ancient Greeks, penetrated by the necessity that the people who live under a popular government were educated toward virtue, made in order to inspire virtue, singular institutions.”<sup>iv17</sup> The most singular institutions<sup>18</sup> are of course those found in Plato’s *Republic* or in Sparta. In other words, singular institutions<sup>19</sup>—confounding the difference between laws, morals, and manners—were praised [in the virtue section, in the virtue part of the book]. In the present context where we live in the atmosphere of freedom—and hence of the commercial republic, and therefore of a different notion of law—singular institutions are discouraged. Thank you very much.

Now we have very much to discuss today, and I do not know what would be the best beginning. I must not forget, this is the last meeting. There should be a kind of grand finale, so to say. Now we start<sup>20</sup> from the<sup>21</sup> end of chapter 7, when he speaks of the

<sup>iii</sup> *Spirit of Laws*, vol. I, bk. XIX, ch. 21, 304.

<sup>iv</sup> *Spirit of Laws*, vol. I, bk. IV, ch. 6, 34.

English explicitly: “That is the people which has understood best of all peoples in the world to benefit at the same time of these three great things—religion, commerce, and freedom.”<sup>v 22</sup> Virtue is not mentioned here, because he had made clear that the concern with virtue was not the chief preoccupation of the English as he knew them. And what he thinks about religion we have seen in chapter 19. It means that in England—in the leading circles at any rate—a great lukewarmness, to put it mildly, prevails. [There is] no fanaticism,<sup>23</sup> [which is] all to the good.

So one can say<sup>24</sup> [that] lukewarmness regarding religion and the opposite of lukewarmness regarding commerce<sup>25</sup> is what<sup>26</sup> [Montesquieu] likes. This is<sup>27</sup> a big part of the whole history of modern man, this posture toward religion accompanied necessarily by a more favorable posture toward commerce. In a simple formula, which is not universally valid but sufficient for the purpose: The other-worldly bliss becomes de-emphasized, and the this-worldly goods becomes much more strongly emphasized. In the extreme modern movements, paradise,<sup>28</sup> heaven<sup>29</sup> to be established on earth by human means, instead of<sup>30</sup> expecting the kingdom of God.<sup>31</sup>

**Student:** I wonder what you thought of my rough identification<sup>32</sup>, at this point, of laying laborious, just, and moderate with commerce, religion, and liberty?

**LS:** You know what he means by moderate. By moderate he means the European monarchies if liberally managed, and republics. Whereas when he speaks of republics, commercial republics, he excludes of course monarchies. That is not too important. It only indicates that some of the proposals he makes regarding the liberty of trade<sup>33</sup> would be incompatible with the spirit of the French monarchy. Mr. Moulton?

**Mr. Moulton:** How would this lukewarmness of moderate religion<sup>34</sup> compare<sup>35</sup> with ancient religion. Do you seem to notice something peculiarly modern about this lukewarmness?

**LS:** Oh well, one can never look into the hearts of men. One can only take overt facts; overtness doesn't mean that they must be overt to the most stupid reader. [LS writing on the board] All right, let us speak of the ancients for one moment. It is perfectly clear that men like Plato and Aristotle, to say nothing of Thucydides and so on, did not believe in the Olympian gods as most Athenians of that time, to say nothing of Spartans and Thebans<sup>36</sup>. That is clear. But they were philosophers. On the other hand, as every reader of the First Book of the *Politics* knows, they were not commercialists. So that what you have here is, to use a very clear formula, philosophy plus gentlemen.<sup>37</sup> That means in economic terms owners of estates—of course he has a bailiff to take care of the everyday working—and he lives on the income, the revenue of his farm. He is a gentleman farmer.<sup>38</sup> The commercial people are distrusted on political grounds,<sup>39</sup> on the grounds still indicated by Montesquieu in the moralistic political Books III-V.

Now what do we find here when we turn to these moderns, when of course there is also something like philosophy. Think only of Montesquieu's study of the tongue of an ox,

<sup>v</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 7, 321. Strauss's own translation.

which at that time was of course a part of philosophy—still called in Philadelphia, how is it called, the American Association for Natural Philosophy. It was founded by Benjamin Franklin, I believe.

**Student:** American Philosophical Association.

**LS:** It included natural science. Philosophy—all right—plus commerce. That's the new thing. And needless to say, a more subtle study of the first item would show that this philosophy as Plato and Aristotle understood it is not the same thing as philosophy as Descartes, Hobbes, etc., understood it. Is this clear now?

**Mr. Moulton:** I don't get the—my question was about religion.

**LS:** Oh yes, in this case, to the extent one can speak of that—because there is strictly speaking not a Greek word for religion, *eusebeia* meaning more piety—but one can say they took it for granted there would be a state religion, and that this state religion would be enforced so that anyone seriously counteracting it by word or deed would commit a punishable offense. They would be milder than the non-philosophers, and the proof ... in Plato's *Laws*, but it would remain a punishable offense. There is no question. Whereas in modern times the development went toward one hundred percent toleration.<sup>40</sup> That was never proposed in ancient times, never. And this [is] connected also. If you want to have a somewhat more complex speech, I will go into that.

That doesn't do away with the fact that what I said, the lukewarmness regarding religion and the hotness regarding commerce are peculiarities of this modern development until the big reaction came—and I use this word “reaction” not in the nasty sense in which we speak of reactionaries. Rousseau and the German idealists, who finally claimed that they have acquired a moral philosophic position which combines the nobility of Plato and Aristotle with the highest objectives of the modern school, and therefore surpasses both. That is the claim of men like Hegel above all. Now in order to see how questionable this claim is we should look at a passage, which is anyway very useful for our purposes, in Immanuel Kant's *Perpetual Peace*.

**Mr. Reinken:** Page 27, halfway down, the LLA translation: “The problem of the formation of the state hard as it may sound is not insoluble. Even for a race of devils, granted that they have intelligence, it may be put thus—”

**LS:** No, “assuming that they have intelligence.” So they are devils, they are morally absolutely corrupt, but they are shrewd fellows, they are not fools. That is what Kant means, no less than that. Yes.

**Mr. Reinken:** “—it may be put thus: Given a multitude of rational beings who in a body require general laws for their own preservation but each of whom as an individual is secretly inclined to exempt himself from this restraint, how are we to—”

**LS:** That is devilishness according to Kant, that we think the moral rules are universally valid except for me now. Otherwise, the whole world is just, but except here there must be a little island where I can do what I like. Go on.

**Mr. Reinken:** “—So how are we to order their affairs and how establish with them a constitution such that although their private dispositions may be really antagonistic they may yet so act as a check on one another that—”

**LS:** Antagonistic means anti-social. They really would like to exploit everybody else if they could.

**Mr. Reinken:** “—they may yet so act as a check on one another that in their public relations the effect is the same as if they had no such evil sentiments.”

**LS:** So, in other words, the perfectly virtuous man and the shrewd crook would act in the same way provided the institutions have teeth in them, because then the crook would know it is no good to go to prison of course, and for this low motive he would abstain from wrongdoing which the moral man would do from the true motive. Yes.

**Mr. Reinken:** “Such a problem must be capable of solution, for it deals not with the moral reformation of mankind<sup>41</sup> but only with the mechanism of nature. And the problem is to learn how this mechanism of nature can be applied to men in order so to regulate the antagonism of conflicting interest in a people that they may even compel one another to submit to compulsory laws and thus necessarily bring about the state of peace in which laws have force. We can see in states already existing, although very imperfectly organized, that in externals they already approximate very nearly to what the idea of right prescribes, although the principle of morality is certainly not the cause. A good political constitution, however, is not to be expected as a result of progress in morality, [but] rather conversely the good moral condition of a nation is to be looked for as one of the first proofs of such a constitution. Hence, the mechanism of nature working through the self-seeking propensities of man, which of course counteract one another in their external effects, may be used by reason as a means of making way for the realization of her own purpose, the empire of right.”<sup>vi</sup>

**LS:** Now, let us stop here.<sup>42</sup> What he tries to show is that this purely Machiavellian mechanism—the Mandevillian mechanism of private vices—brings about as perfect a social<sup>43</sup> order, a political order, as angels could bring about. So you don’t need angelic virtue for political goodness. Hegel would object to this point surely,<sup>44</sup> but nevertheless it became an ingredient of Hegel’s doctrine.<sup>45</sup> What Kant does in the sequel is to speak of one thing which divides man—after all, the writing deals with perpetual peace. The one thing which divides man above all is religion. And the one thing which unites man is commerce.

We know this trend of thought more immediately today through Marxism. The economic factor, the modes of production, by themselves having reached a certain stage will make

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<sup>vi</sup> Kant, Immanuel. *Perpetual Peace*. Edition unknown.

wholly superfluous any preaching, i.e., any explicit concern with morality. That is an important modification of that, but a part of it. The shift of emphasis from religion to trade<sup>46</sup> [and] commerce, which took place in the seventeenth and eighteenth centuries, is an important part of the pre-history of Marxism, as of course no one knew better than Marx himself.

Among the lesser writers, Sir William Petty<sup>vii</sup>, to whom I referred on another occasion and Montesquieu mentions, must never be forgotten. Sir William Petty was a kind of pupil of Hobbes. That is a true line. There is a kind of history of political theories which completely disregards the moral and the economic element,<sup>47</sup> say Locke's economic . . . as described in<sup>48</sup> Chapter VII of the *Second Treatise*; it doesn't go sufficiently into it, just as it doesn't go sufficiently into it in the case of Hobbes. Commerce and religion—without going into these two issues one will not understand any of these modern thinkers from Hobbes on. The primary step was in Machiavelli where commerce does not yet play any important role, although he came from a commercial republic, Florence, but this had not yet come to the fore. But the principle appeal to the passions<sup>49</sup>, to desires—which are actual in all men, or can very easily be aroused in all men, the desire for gain for example<sup>50</sup>—is the way to solve the human problem and not the demand addressed to man to be virtuous. That was chapter 15 of *The Prince*, which I think everyone must have read if he wants to know what has been happening<sup>51</sup> in the last centuries. So I thought I should at least not neglect to speak about that. Yes.

**Student:** Did some of the . . . Enlightenment thinkers such as Voltaire actually think that commerce did make men good rather than just put men into a mechanistic relationship that cancelled—

**LS:**<sup>52</sup> In the case of Voltaire. Voltaire knew<sup>53</sup> the importance of commerce. I couldn't tell you now what the precise position of Voltaire is, but Voltaire is not comparable—he had a terrific effect—<sup>54</sup>[as] a political thinker<sup>55</sup> to Montesquieu. Clearly in Montesquieu too it is not merely commerce. As we have seen, it is also enlightenment which is very important. You remember the book on penal law: the knowledge which one has acquired in certain countries and which one will acquire in others,<sup>56</sup> the certainty of the spreading knowledge will bring about a more humane condition.

So this simple formula which I state here is I think simply true. It needs, as every formula needs, [many lengthy] footnotes but that's another matter.<sup>57</sup> But it is properly understood as true.

Now as Mr. . . . pointed out this book begins with a prose poem. This was omitted in the first edition because the editor, a Presbyterian clergyman in Geneva, didn't like it. Therefore it was omitted, and it was brought out in a later edition, 1757 or thereabouts, but it is surely Montesquieu's work. One must consider, however, that there is another book in this work which also begins with a poem—I mean not merely with a half verse like the one from [the] *Aeneid* quoted here—and that is Book XXIII dealing with population, i.e., generation of offspring,<sup>58</sup> love. And<sup>59</sup> [there] he takes a quotation from

<sup>vii</sup> William Petty (1623–87) English economist, scientist, and philosopher.

Lucretius, but that is in verse. Here he has a prose poem. Quite properly, you don't make poems on commerce while everyone writes poems on love, those who can write poems and those who can't as well. Now in this prose poem, an invocation to the Muses—well let us read<sup>60</sup> the first paragraph.

**Mr. Reinken:**<sup>61</sup> It's not in the Nugent.

**LS:** All right, translate it.

**Mr. Reinken:** "Virgins of mount Pierie, do you hear the name which I give you?"

**LS:** Or "understand the name."

**Mr. Reinken:** "do you understand the name which I give you?"

**LS:** What does he mean by that?

**Mr. Reinken:** The Muses do.

**LS:** Or virgins<sup>62</sup>—it's hard to say. He was somewhat naughty [laughter]. Go on.

**Mr. Reinken:** "Inspire me. I have run a long race. I am overcome with pains, fatigues, and frustrations. Put in my spirit that calm and that mildness which today flees far from me. You are never so divine as when you lead to wisdom and to truth by pleasure."<sup>viii</sup>

**LS:**<sup>63</sup> So that is what he wants to do: to lead to wisdom through pleasure. But of course it is not merely meant to please. It is to lead to wisdom through pleasure. Now he makes clear in the sequel that his work in preparing the book was not altogether pleasant. You can imagine how many law books he had to go through<sup>64</sup>, [which] is not necessarily a pleasant task, but his book shall be pleasant.

**Student:** Does that imply that he has some unpleasant things which he doesn't want to say?

**LS:** Not necessarily. Do you find that here?

**Same Student:** Well, he says let me please you.

**LS:** All right, he says, if you<sup>65</sup> don't wish to sweeten the hardness of my work, conceal the very work.<sup>66</sup> Because if you see the work, as everyone who has read scholarly books knows, if the sweat and labor is displayed in front of the public that is not a very pleasant spectacle. So that if you get a presentation in which the work is not visible, it is more pleasant reading. Yes.

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<sup>viii</sup>*Spirit of Laws*, vol. I. Apparently Mr. Reinken's own translation.

**Another Student:** Isn't it also possible that<sup>67</sup> it could be translated "sweeten the rigor of my instruction." In other words, his argument if you were to state it starkly<sup>68</sup> would be an abstract, subtle, philosophic argument, but he intends to put it in a manner which is diffuse and pleasing.

**LS:** I see now what you mean and I believe that Mr. . . . meant the same, namely that Montesquieu by concealing the work<sup>69</sup> could also mean the concealment of that reasoning which he does not set forth. That's what you mean. He gives us only [the] results, so to speak, and only a part of the reasoning. That's possible. I didn't think of it when reading this particular passage.

Now, the Muses<sup>70</sup> delight in what is delightful to others, he makes clear. So they are not selfish. "When the waters from your fountain—"

**Mr. Reinken:** "—spring from the rock which you love, they do not come up into the air to fall back. They run in the meadow. They make your delight because they make delight for the shepherds."

**LS:** Yes, so the Muses are kind [and] communicative. And the Muses finally, the last point, they inspire him with a message of reason. Ultimately, poetry which does not have a reasonable message is not good poetry. You have heard<sup>71</sup> this harsh and severe view of poetry [before], that poetry cannot be self-contained, that it must serve the purpose of wisdom—[from] Plato, of course.<sup>72</sup> Only, the wisdom of Montesquieu differs from that of Plato, and part of that is that he writes a poem in prose at the head of a chapter on commerce. Now let us see the general importance of commerce, stated clearly in the first chapter. Let us read that please.

**Mr. Reinken:** "The following subjects deserve to be treated in a more extensive manner than the nature of this work will permit. Fain would I glide down a river, a gentle river, but I am carried away by a torrent."<sup>ix</sup>

"Commerce is a cure for the most destructive prejudices—"

**LS:** He simply says, "of the destructive prejudices."

**Mr. Reinken:** "—for destructive prejudices; for it is almost a general rule, that wherever we find mild morals, there commerce flourishes; and that wherever there is commerce, there we meet with mild morals."<sup>x</sup>

**LS:** Commerce doesn't destroy all prejudices, only the destructive ones. That is clear. That's an old thought in a way. The beginning of the *Odyssey*, the traveler—he was of

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<sup>ix</sup>In original: "Fain would I glide down a gentle river, but I am carried away by a torrent."

<sup>x</sup>In original: "Commerce is a cure for the most for destructive prejudices; for it is almost a general rule, that wherever we find agreeable manners, there commerce flourishes; and that wherever there is commerce, there we meet with agreeable manners."

course not a trader, Odysseus, but a traveler—and he had seen the mind of many cities and that had liberated him. Yes.

**Mr. Reinken:** “Let us not be astonished, then, if our manners are now less savage than formerly. Commerce has everywhere diffused a knowledge of the morals of all nations: these are compared one with another, and from this comparison arise the greatest advantages.”<sup>xi</sup>

**LS:** “from this great benefits have resulted.” What he means is this<sup>73</sup>: People cease to absolutize their own morals when they know there are other people as decent and as intelligent as they are who have different morals. In other words, that leads to tolerance. Yes.

**Mr. Reinken:** “Commercial laws, it may be said, improve manners for—”

**LS:** Well, “the laws of commerce,” which is not quite the same as commercial laws.

**Mr. Reinken:** “Laws of commerce, it may be said, improve morals for the same reason that they destroy them. They corrupt pure morals. This was the subject of Plato’s complaints; and we every day see that they polish and refine the barbarous.”<sup>xii</sup>

**LS:** So, in other words, we get gentle manners, but we lose the purity of manners, either which we have in fact or to which we aspire—that doesn’t make any difference here. Those of you who are interested in this question might perhaps look in my *Natural Right and History*, page 188, where I quote a very strong and clear passage from Burke, and also give some evidence from Hobbes himself—Hobbes’s teaching regarding virtue, [which] I indicated<sup>74</sup> in a footnote. So, now we know why commerce is so important. It makes men milder. It destroys the destructive prejudices. But<sup>75</sup> it of course<sup>76</sup> implies<sup>77</sup> a grave break with the traditional view of things. It questions the importance of the purity of manners. Yes.

**Student:** Is this only because of the travel and the communication involved in commerce or does it have other things to do with commerce?

**LS:** No I suppose it has something to do with what is sometimes called the profit motive. You must not forget that gain, lucre, and the desire for it, was traditionally frowned upon. That the profit motive, as it is now called, is unquestionably preferable to tyrannies—I have no doubt about that. But that doesn’t mean that the profit motive is itself the highest principle of a society one could measure. Yes.

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<sup>xi</sup> In original: “Let us not be astonished, then, if our manners are now less savage than formerly. Commerce has everywhere diffused a knowledge of the manners of all nations: these are compared one with another, and from this comparison arise the greatest advantages.”

<sup>xii</sup> In original: “Laws of commerce, it may be said, improve morals for the same reason that they destroy them. They corrupt the purest morals. This was the subject of Plato’s complaints; and we every day see that they polish and refine the most barbarous.” *Spirit of Laws*, vol. I, bk. XX, ch. 1, 316.



**Same Student:** As far as the other effect of commerce, he seems to say that the only reason that commerce softens morals<sup>78</sup> [and] the harsh manners is because commerce leads to a knowledge of the manners of other countries and so forth.

**LS:** Well, we are not yet through. He<sup>79</sup> says of the many, many things which go on, “a torrent,” that he can only go step by step. Let us read the first sentence of the next chapter.

**Mr. Reinken:** “Peace is the natural effect of trade.”<sup>xiii</sup>

**LS:**<sup>80</sup> If peace and the human postures favorable to peace, peaceableness, are the same as virtue, then commerce would be simply a moralizing factor. Yes? Or was the sentence too complicated? I mean if virtue is equal to peaceableness, and commerce more than anything else is an advancement to peace, then commerce is a moralizing factor. Who has said that virtue is equal to peaceableness?

**Student:** Hobbes.

**LS:** Hobbes, sure.<sup>81</sup> One must really study that man if he wants to understand this kind of thing.<sup>82</sup> There is<sup>83</sup> a difficulty because commerce unites, but it does not simply unite as we see in the next paragraph.

**Mr. Reinken:** “But if the spirit of commerce unites nations, it does not in the same manner unite individuals. We see that in countries where the people move only by the spirit of commerce, they make a traffic of all the humane actions, all the moral virtues—”

**LS:** “of all human actions.”

**Mr. Reinken:** “—of all human actions, all the moral virtues.”

**LS:** A strong statement. Yes.

**Mr. Reinken:** “The most trifling things, those which humanity would demand, are there done, or there given, only for money.”<sup>xiv</sup>

**LS:** Yes, so in other words it is not such a simple thing that commerce makes men good. It makes [them] good in certain respects. But you have to balance it. Is it better to have foreign trade at this price, or is the price too high? This is a question which everyone has to decide for himself. But the key point for Montesquieu is that there is a connection between commerce, this relative gentleness which goes together with being a very tough and hard bargainer, and political liberty. And since political liberty is such a great good for him, that settles it. He’s perfectly willing to swallow the unpleasant sides of trade. Skip the next paragraph and read the one after.

<sup>xiii</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 2, 316.

<sup>xiv</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 2, 316–17.

**Mr. Reinken:** “The total privation of trade, on the contrary, produces robbery, which Aristotle ranks in the number of means of acquiring—”

**LS:** Which is quite correct.

**Mr. Reinken:** “—yet it is not at all inconsistent with certain moral virtues. Hospitality, for instance, is most rare in trading countries, while it is found in the most admirable perfection among nations of vagabonds.”<sup>xv</sup>

**LS:** Yes, so in other words he reminds us of the price we have to pay if we go in for the spirit of commerce, which he is willing to pay. Now the reasoning is clear.<sup>84</sup> [W]hat he implies here is this: No one, and especially no nation, can be virtuous in every respect. There are virtues peculiar to the trading societies and virtues peculiar, say, to agricultural societies, not to say to robber societies. And you cannot have all the virtues at the same time.<sup>85</sup> What tips the balance between the two kinds<sup>86</sup> of virtues, fostered by commercial societies on the one hand and agricultural societies on the other<sup>87</sup>?

**Student:** Political freedom.

**LS:** Freedom, sure. Good. So Montesquieu is one of the men—there are quite a few of them but not terribly many—who is helpful as a counter-poison against a very common human vice from which all of us are likely to suffer if we don’t do anything about it. And that is to eat the cake and to have it [too]. The sounder view is that everything requires a price, to abandon something else which is not simply bad.

Now in chapter 3 he makes clear that<sup>88</sup> freedom rather than virtue<sup>89</sup> is the thing which counts. And then<sup>90</sup> after this general explanation of what commerce means, he divides commerce into two kinds: commerce of luxury, which belongs to the monarchic countries generally speaking, and the commerce of economy, which belongs to the republican societies. The commerce of economy is directly related to real needs—say bread, salt, timber and other things—as distinguished from fancy needs, like pearls and such other things. Let us read the third paragraph of chapter 4.

**Mr. Reinken:** “Cicero was of this opinion, when he so justly said, ‘that he did not like that the same people should be at once both the lords and factors of the whole earth.’ For this would, indeed, be to suppose that every individual in the state, and the whole state collectively, had their heads constantly filled with grand views, and at the same time with small ones; which is a contradiction.”

**LS:** So in other words there must be a political stratum different from the trading stratum, which is a thought very well known from Adam Smith<sup>91</sup>—the government can’t be in the hands of the trading interests. But, nevertheless, while he praises Cicero, the sequel shows that there is a certain criticism of Cicero<sup>92</sup> nevertheless meant to be.

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<sup>xv</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 2, 317.

**Mr. Reinken:** “Not but that the most noble enterprises are completed also in those states which subsist by economical commerce: they have even an intrepidity not to be found in monarchies. And the reason is this:

“One branch of commerce leads to another, the small to the moderate, the moderate to the great; thus he who has gratified his desire of gaining a little raises himself to a situation in which he is not less desirous of gaining a great deal.”<sup>xvi</sup>

**LS:** So, in other words, Cicero’s simple distinction—politics deals with the great things and trade with the small things—is not so tenable as Cicero believed. Economics is of much greater political importance than Cicero believed.

Now in the sequel in this chapter he speaks of the security of property as a crucial condition and we know that rule of law. But the security of property means the security of acquisition of ever more property. You obviously can have security of property without any possibility of enlarging your property. Say everyone inherits his farm from his ancestors and hands it down to his children and there is no possibility of enlarging that. One only has to read Plato and Aristotle to see how much these notions appealed to classical thought. But Montesquieu, as Locke before him, is concerned with the freedom of acquiring more and more, a thought with which we are familiar from #10 of the *Federalist Papers*. How is the formula of Madison [stated] there: protecting the unequal ability of acquiring property. And no ends, there are no<sup>93</sup> limits possible in the nature of the case. The legislature may put a factual limit by<sup>94</sup> confiscatory taxes. That he may do. But in principle there is no principle anymore which could prevent that. Let us read the first paragraph of chapter 5.

**Mr. Reinken:** “Marseilles, a necessary retreat in the midst of a tempestuous sea; Marseilles, a harbor which all the winds, the shelves of the sea, the disposition of the coasts, point out for a landing-place, became frequented by mariners; while the sterility of the adjacent country determined the citizens to an economical commerce. It was necessary that they should be laborious to supply what nature had refused; that they should be just, in order to live among barbarous nations, from whom they were to derive their prosperity; that they should be moderate, to the end that they might always taste the sweets of a tranquil government; in fine, that they should be frugal in their manners, to enable them to subsist by trade—a trade the more certain as it was less advantageous.”<sup>xvii</sup>

**LS:** Let us stop here. So Marseilles was in its way a wonderful colony. Incidentally, in the enumeration of various cities given in the first paragraph of chapter 4, of commercial republics—Tyre, Carthage, Athens, Marseilles, Florence, Venice, and Holland—Marseilles is in the center, just for the people who are amused by this kind of thing. And now we know the reason why. Yes.

**Student:**<sup>95</sup> He referred in Book VI to Marseilles as the wisest of the ancient republics because of some law limiting dowries. That and the other mention of Marseilles and now

<sup>xvi</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 4, 318.

<sup>xvii</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 5, 319.

the present mention of Marseilles and in the next chapter suggests that he is also pushing backwards this interpretation, this connection of virtue and commerce. Excuse me—virtue, commerce, freedom, and peaceableness. To a certain degree he has inserted even in the books on virtue a praise of—

**LS:** But the question was—we'd have to make a close comparison whether there was the same emphasis on commerce.

**Same Student:** No, just a suggestion.

**LS:** But there the key point was virtue, and it is no longer the key consideration though it comes in: how a city situated like Marseilles is simply forced by the circumstances to be virtuous, which is a strictly Machiavellian thought. Machiavelli would say these and these conditions made the Marseilles people virtuous or good and *kept* them good. That is [how he] phrases [it], what makes a man good—for example, a princely advisor. The prince must see how he can keep him good. And one thing is of course to pay him well and other things. But that is here the same thought.

In chapter 7 we have read this remarkable and cogent phrase about the genius of the English, these three great things—he doesn't say the three greatest things—<sup>96</sup>religion, commerce, and freedom,<sup>97</sup> [with] commerce in the middle. We would have to read some other passages, especially the last chapter of Book XIX where he speaks of the English national character,<sup>98</sup> what he says there about religion and which gives us a commentary on what he means by saying the English were so excellent regarding religion. It had nothing to do with anything like orthodoxy of course. Then he goes into more specific considerations regarding laws of commerce. And he is clearly in favor of freedom of trade. Now there is one point in chapter 9 where he goes back to the principle that freedom of trade is the only way to find a just price.<sup>99</sup>

**Mr. Reinken:** [first paragraph, end:] “Every nation that acts upon Japanese principles must necessarily be deceived; for it is competition which sets a just value on merchandise, and establishes the relation between them.”<sup>xviii</sup>

**LS:** The *true* relations between them. Yes. So in other words that's the only sensible meaning of the just price, what the market will . . . situations of famine, war, and so on where the market gives of course much better results for the buyer, and then is this<sup>100</sup> the just price if he takes maybe more? That was a great question, because the old view of the just price, as transmitted by the Thomistic tradition, and going back ultimately to Aristotle's *Ethics*, means that there is a just price in the nature of the things, and not merely of the present opportunity for enriching oneself, used whenever it was necessary to fight speculators or other people.

Now this is a new view, and we find it clearly stated by Thomas Hobbes, *Leviathan*, chapter 15: “Justice of actions, is by writers divided into ‘commutative,’ and ‘distributive:’ and the former they say consisteth in proportion arithmetical; the latter in

<sup>xviii</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 9, 322.

proportion geometrical. Commutative, therefore, they place in the equality of value of the things contracted for; and distributive, in the distribution of equal benefit to men of equal merit.” That is a correct re-statement. And now comes his criticism: “As if it were injustice to sell dearer than we buy; or to give more to a man than he merits. The value of all things contracted for, is measured by the appetite of the contractors: and therefore the just value is that which they be contented to give.”<sup>xix</sup> Now in a famine people are contented to give atrocious prices for a piece of bread. And the question is—one would have to know quite a bit about the situation to judge fairly—can one leave it at that.<sup>101</sup>

Then he goes into a discussion of various economic institutions, like banks and monopolies. It is clear that Montesquieu is in favor of freedom of commerce, the title of chapter 12, but this freedom is not simply understood in the sense of the free traders, especially of the nineteenth century. We can perhaps read the first paragraph of chapter 13.

**Mr. Reinken:** “Wherever commerce subsists, customs (*douanes*, not *coutumes*)<sup>102</sup> are established.”<sup>xx</sup> Commerce is the exportation and importation of merchandise, with a view to the advantage of the state; customs are a certain right over this same exportation and importation, founded also on the advantage of the state. Hence it becomes necessary that the state should be neutral between its customs and its commerce, that neither of these two interferes with the other, and then the inhabitants enjoy a free commerce.”<sup>xxi</sup>

**LS:** So in other words free trade properly speaking is rejected by Montesquieu as a matter of course, only with this important qualification. Another important passage occurs in chapter 15.

**Student:** . . . .

**LS:**<sup>103</sup> Export or import, he doesn’t make any distinction—at any rate, the interference of the state with the free trade considering the benefit of the state in question. In chapter 15, the last paragraph.

**Mr. Reinken:** “In affairs relating to common civil contracts, the law ought not to permit the seizure of the person; because the liberty of one citizen is of greater importance to the public than the ease or prosperity of another. But in conventions derived from commerce, the law ought to consider the public prosperity as of greater importance than the liberty of a citizen; which, however, does not hinder the restrictions and limitations that humanity and good policy demand.”<sup>xxii</sup>

**LS:** So in other words, the liberty of a citizen is not simply the highest consideration. That’s the point. This has grave implications for the natural right question. Can natural right ever be overridden by another consideration? This question<sup>104</sup> we have discussed on

<sup>xix</sup> Hobbes, Thomas. *Leviathan*. Edition unknown.

<sup>xx</sup> In original: “Wherever commerce subsists, customs are established.”

<sup>xxi</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 13, 323.

<sup>xxii</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 15, 325.

other occasions. Wealth consists chiefly of the mobile goods, as distinguished from the land. That is developed in chapter 23. Let us read perhaps this third sentence of chapter 23.

**Mr. Reinken:** “Movable effects, as money, notes, bills of exchange, stocks in companies, vessels, and, in fine, all merchandise, belong to the whole world in general; in this respect, it is composed of but one single state, of which all the societies upon earth are members.”

**LS:** This of course explains Kant’s thought when he speaks of perpetual peace, a kind of political organization of the whole human race, and links it up with the expansion of commerce. To the extent to which the societies are trading societies, they form in a sense a one world state. That’s implied here. Yes.

**Mr. Reinken:** “The people who possess more of these movable effects than any other on the globe are the most opulent. Some states have an immense quantity acquired by their commodities, by the labor of their mechanics, by their industry, by their discoveries, and even by chance. The avarice of nations makes them quarrel for the movables of the whole universe. If we could find a state so unhappy as to be deprived of the effects of other countries, and at the same time of almost all its own, the proprietors of the land would be only planters to foreigners. This state, wanting all, could acquire nothing; therefore, it would be much better for the inhabitants not to have the least commerce with any nation upon earth, for commerce in these circumstances must necessarily lead them to poverty.”<sup>xxiii</sup>

**LS:** So there are conditions in which trade is simply bad for the country—of course the liberal view now prevailing would deny that. It would say because the hidden resources which they have and even only the human labor at their disposal can be actualized, and will only be actualized, through stimulation by foreign trade, perhaps foreign aid. In the last two paragraphs he speaks of Japan. Perhaps we should read that.

**Mr. Reinken:** “Let us now consider Japan. The vast quantity of what they receive is the cause of the vast quantity of merchandise they send abroad. These are thus in as nice an equilibrium as if the importation and exportation were but small.”<sup>xxiv</sup> Besides, this kind of exuberance in the state is productive of a thousand advantages; there is a greater consumption, a greater quantity of those things on which the arts are exercised; more men employed, and more numerous means of acquiring power; exigencies may also happen that require a speedy assistance, which so opulent a state can better afford than any other. It is difficult for a country to avoid having superfluities; but it is the nature of commerce to render the superfluous useful, and the useful necessary. The state will be, therefore, able to afford necessities to a much greater number of subjects.

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<sup>xxiii</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 23, 328–29.

<sup>xxiv</sup> In original: “Let us next consider Japan. The vast quantity of what they receive is the cause of the vast quantity of merchandise they send abroad. Things are thus in as nice an equilibrium as if the importation and exportation were but small.”

“Let us say, then, that it is not those nations who have need of nothing that must lose by trade; it is those who have need of everything. It is not such people as have a sufficiency within themselves, but those who are most in want, that will find an advantage in putting a stop to all commercial intercourse.”<sup>xxv</sup>

**LS:** That is a key term: self-sufficient peoples. Self-sufficient peoples in the classical notion would be one which would not need at all any foreign trade,<sup>105</sup> any exchange with others. But since this is practically impossible, to have as little need for foreign trade as possible<sup>106</sup> . . . .<sup>107</sup> The concept of self-sufficiency is preserved, but it is now differently evaluated. There is nothing very desirable in it. The wealth of nations comes from international trade. And a moral price is to be paid for it, but this price is made bearable because we are more interested in freedom than in pure manners. “We” meaning Montesquieu and his friends. That I think is the argument.

**Student:** Is it freedom simply, or is it freedom for wealth?

**LS:** No<sup>108</sup>. Political freedom—that he means very seriously. Political freedom—he doesn’t have of course the extreme notions of our age, but he means this substantial benefit, that there is freedom of speech, of decent speech.

**Same Student:** I was thinking about the modification in chapter 15: “the law ought to consider the public prosperity as of greater importance than the liberty of a citizen.”<sup>xxvi</sup>

**LS:**<sup>109</sup> That is a complication which arises in a more advanced part of the argument. Since it is good for my freedom as a citizen that there be foreign commerce, then I must accept certain limitations of my freedom as a trader in order to enjoy<sup>110</sup> [and] be a member of a wealthier society. That is not difficult. It’s only a more complicated case. Yes.

**Another Student:** How do you interpret that last sentence . . . “those who are most in want will find an advantage in putting a stop to all commercial intercourse.” If a nation, say a South American nation, [if] the rate of exchange is so much against them that they can only lose by exchanging their goods with another, then they would be wiser to put a stop to trade.

**LS:** He used the example of Poland before. That was for him the clear case of a nation which is simply exploited by exporting. Sure that could be. And he does not go into the question whether in the long run foreign trade would not be beneficial even to those backward<sup>111</sup>, [now] how are they called,<sup>112</sup> underdeveloped nations—

**Student:** Emerging<sup>113</sup>—

**LS:** Emerging nations. Well the euphemisms change so fast that one forgets.

<sup>xxv</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 23, 329–30.

<sup>xxvi</sup> *Spirit of Laws*, vol. I, bk. XX, ch. 15, 325.

**Student:**<sup>114</sup> In that chapter he does say that a country in the situation of Poland would be better off not trading because if they do trade, in the long run they will be completely bankrupt. His idea is that they keep mortgaging their capital.

**LS:** Yes, sure. He is not a Manchester man by any means. That is clear.

**Mr. Reinken:** But the argument does turn on Poland doing luxury trade. He doesn't give an argument to show that trade in solid, useful things—

**LS:** But they don't need any. They have enough grain and potatoes. Today that may be a problem in Poland [laughter], but at that time—

**Student:** I was thinking of the case, would he argue of Communist China, very sorely put, that it should not be buying wheat from Canada, that it was uneconomic?<sup>115</sup>

**LS:** I don't dare pronounce on that because—the only thing I know that Communist China would be for him [is] a very clear case to be explicable fully in terms of climate of oriental despotism. This I know. But I wouldn't say what proposals he would make to Mao. Regarding emerging nations, you have of course read the story . . . .

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<sup>1</sup> Deleted “Now this hypothesis which you propose toward the end cannot be considered before one has read the other Books. That's clear. So I will not go into that now. Now.”

<sup>2</sup> Moved “itself.”

<sup>3</sup> Deleted “of course.”

<sup>4</sup> Deleted “is.”

<sup>5</sup> Deleted “Book.”

<sup>6</sup> Deleted “Student: Chapter 23.

Student: Chapter 23, I'm sorry, ‘To what Nations Commerce is Prejudicial.’”

<sup>7</sup> Deleted “nations, some.”

<sup>8</sup> Deleted “a modification.”

<sup>9</sup> Deleted “here.”

<sup>10</sup> Deleted “from Montesquieu.”

<sup>11</sup> Deleted “Well.”

<sup>12</sup> Deleted “Well, thank you very much.”

<sup>13</sup> Deleted “as.”

<sup>14</sup> Deleted “Thank you.”

<sup>15</sup> Deleted “he only.”

<sup>16</sup> Deleted “of course.”

<sup>17</sup> Deleted “And.”

<sup>18</sup> Deleted “are.”

<sup>19</sup> Moved “in the virtue section;” deleted “which;” moved “in the virtue section of the book;” deleted “singular institutions.”



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- <sup>20</sup> Deleted “perhaps.”
- <sup>21</sup> Deleted “passage in chapter 7, at the.”
- <sup>22</sup> Deleted “And of course.”
- <sup>23</sup> Deleted “And that is.”
- <sup>24</sup> Deleted “the.”
- <sup>25</sup> Deleted “that.”
- <sup>26</sup> Deleted “he.”
- <sup>27</sup> Changed from “And this is, I think.”
- <sup>28</sup> Deleted “and.”
- <sup>29</sup> Deleted “are.”
- <sup>30</sup> Deleted “one.”
- <sup>31</sup> Deleted “Yes.”
- <sup>32</sup> Deleted “of.”
- <sup>33</sup> Deleted “some of them.”
- <sup>34</sup> Deleted “how would you.”
- <sup>35</sup> Deleted “this.”
- <sup>36</sup> Deleted “did.”
- <sup>37</sup> Deleted “And.”
- <sup>38</sup> Deleted “And.”
- <sup>39</sup> Deleted “which are.”
- <sup>40</sup> Deleted “And.”
- <sup>41</sup> Deleted “LS: Not with the moral reformation of mankind.”
- <sup>42</sup> Deleted “In other words.”
- <sup>43</sup> Deleted “and political.”
- <sup>44</sup> Deleted “I know that.”
- <sup>45</sup> Deleted “Now.”
- <sup>46</sup> Deleted “to.”
- <sup>47</sup> Deleted “for example.”
- <sup>48</sup> Deleted “Book VII, in.”
- <sup>49</sup> Deleted “and.”
- <sup>50</sup> Deleted “that.”
- <sup>51</sup> Deleted “since its publication.”
- <sup>52</sup> Deleted “Well.”
- <sup>53</sup> Deleted “of course.”
- <sup>54</sup> Deleted “but he is not.”
- <sup>55</sup> Deleted “comparable.”

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<sup>56</sup> Deleted “and.”

<sup>57</sup> Changed from “a long and more than one footnotes but that’s another matter.”

<sup>58</sup> Deleted “and, i.e.”

<sup>59</sup> Deleted “here.”

<sup>60</sup> Deleted “perhaps.”

<sup>61</sup> Deleted “Well.”

<sup>62</sup> Deleted “or virgins.”

<sup>63</sup> Deleted “Yes.”

<sup>64</sup> Deleted “and this.”

<sup>65</sup> Deleted “don’t.”

<sup>66</sup> Deleted “You know.”

<sup>67</sup> Deleted “the, that.”

<sup>68</sup> Deleted “it.”

<sup>69</sup> Changed from “by the concealing of the work he.”

<sup>70</sup> Deleted “are.”

<sup>71</sup> Deleted “this before, I believe, this view.”

<sup>72</sup> Deleted “but.”

<sup>73</sup> Deleted “that.”

<sup>74</sup> Deleted “this.”

<sup>75</sup> Deleted “this.”

<sup>76</sup> Deleted “as he.”

<sup>77</sup> Deleted “is.”

<sup>78</sup> Deleted “softens.”

<sup>79</sup> Deleted “speaks.”

<sup>80</sup> Deleted “You see.”

<sup>81</sup> Deleted “So, I mean.”

<sup>82</sup> Deleted “Now.”

<sup>83</sup> Deleted “of course.”

<sup>84</sup> Deleted “Well.”

<sup>85</sup> Deleted “And.”

<sup>86</sup> Deleted “sets.”

<sup>87</sup> Deleted “what tips the balance.”

<sup>88</sup> Deleted “it is.”

<sup>89</sup> Deleted “which.”

<sup>90</sup> Deleted “he speaks of.”

<sup>91</sup> Deleted “that.”

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<sup>92</sup> Deleted “and.”

<sup>93</sup> Deleted “ends or.”

<sup>94</sup> Deleted “confiscating taxes.”

<sup>95</sup> Deleted “Well.”

<sup>96</sup> Deleted “these three great things.”

<sup>97</sup> Deleted “and.”

<sup>98</sup> Deleted “and.”

<sup>99</sup> Deleted “Where is that? Do you remember that?”

<sup>100</sup> Deleted “then.”

<sup>101</sup> Deleted “Now.”

<sup>102</sup> Parenthetical comment is Mr. Reinken’s.

<sup>103</sup> Deleted “Both.”

<sup>104</sup> Deleted “which.”

<sup>105</sup> Deleted “or.”

<sup>106</sup> Deleted “here it becomes.”

<sup>107</sup> Deleted “Notice.”

<sup>108</sup> Deleted “no, no.”

<sup>109</sup> Deleted “Well.”

<sup>110</sup> Deleted “to.”

<sup>111</sup> Deleted “or.”

<sup>112</sup> Deleted “emerging.”

<sup>113</sup> Deleted “nations.”

<sup>114</sup> Deleted “Well.”

<sup>115</sup> Deleted “Could he say....”